



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम

गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

Complaint No. : 3112/2019
Date of Decision : 19.08.2021

Smt. Arvinder Bawa
R/o C-1-2771/C, Sushant Lok
Phase-I, Gurugram

Complainant

V/s

M/s VSR Infratech Pvt Ltd.
A-22, Hill View Apartments
Vasant Vihar
New Delhi-110057

Respondent

Complaint under Section 31
of the Real Estate(Regulation
and Development) Act, 2016

Present:

For Complainants:
For Respondent:

Mr.Tanuj Aggarwal, Advocate
Ms Shriya Takkar, Adv

ORDER

This is a complaint filed by Smt. Arvinder Bawa, (hereinafter referred as buyer) under Section 31 of the Real Estate(Regulation and Development) Act, 2016 (in brief Act of 2016) read with Rule 29 of The Haryana Real Estate(Regulation and Development) Rules, 2017 (in brief 'Rules') against respondent M/s VSR Infratech Pvt Ltd.(also called as promoter) seeking directions to the respondent/promoter to refund a sum of Rs.50,68,170.35p(Rupees Fifty lac sixty eight thousand one hundred seventy and paise thirty five only) alongwith interest @24% p.a. from the date of allotment, till

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its realisation and compensation amounting to Rs.10,00,000/- litigation expenses amounting to Rs.2,00,000/-.

2. According to complainant/buyer, on 02.11.2011 she booked a service apartment bearing No. SA5-45 in project known as "68-Avenue" situated in Sector 68, Gurugram by paying Rs.4,00,000/-. She was regularly making payment as per demand of respondent from time to time. A Builder Buyer's Agreement (BBA) or Space Buyer Agreement (SBA) was executed on 12.08.2013. Allotment letter was issued by respondent on 02.11.2014. As per clause 31 of BBA/SBA, the respondent was obliged to offer possession of the booked unit within a period of 36 months, from the date of approval of buildings plans, with grace period of three months. Despite making regular payments and even after lapse of five years, respondent failed to offer possession of allotted unit. She (complainant) visited the project site several times to check the status of project and enquired about the progress of the project. She even wrote letters, emails but the respondent failed to provide status report as well as the likely date of completion of the project/unit.

3. Brief facts of complainant's case in tabular form are as under:

Project related details		
I.	Name of the project	"68 AVENEU"
II.	Location of the project	Sector 68, Gurugram
III.	Nature of the project	Commercial
Unit related details		
IV.	Unit No. / Plot No.	SA5-45 Service Appt.
V.	Tower No. / Block No.	
VI	Size of the unit (super area)	Measuring 711.070 sq ft

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VII	Size of the unit (carpet area)	-DO-
VIII	Ratio of carpet area and super area	-DO-
IX	Category of the unit/ plot	Commercial
X	Date of booking(original)	02.11.2011
XI	Date of Allotment(original)	02.11.2014
XII	Date of execution of BBA (copy of BBA be enclosed)	12.08.2013
XIII	Due date of possession as per provisional registration cum allotment letter	Within 36 months from the date of building plans
XIV	Delay in handing over possession till date	More than 5 years
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said ABA	-

Payment details

XVI	Total sale consideration	Rs. 56,95,544.67p.
XVII	Total amount paid by the complainants	Rs.50,68,170.35p.

4. Respondent contested the claim of the complainant/buyer by filing written reply. It (respondent) disputed even maintainability of the complaint alleging that the Adjudicating Officer has no jurisdiction to entertain the complaint, as the complaint pertains to compensation and interest for grievance under section 3,7,9,10,11(4), 12,18 of the Act and the Adjudicating Officer can only deal with the complaint filed under Section 18 of the Act.

5. It is further averred by the respondent that after completing the project, it applied for grant of occupancy certificate but the same could not be granted as the Division Bench of the Hon'ble Punjab & Haryana High Court vide its order dated 09.01.2015 directed HUDA to implement water scheme in Sectors 68 to 80 ,

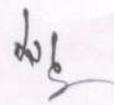
Gurugram as well as measures to be taken with regard to stoppage of illegal extracting of ground water. Due to said order of Hon'ble High Court, service facilities could not be completed and placed in a time bound manner resulting delay in getting the occupancy certificate(OC) which ultimately, they got it on 02.08.2019. In this way, no fault can be attributed on the part of the respondent for non-grant of OC. The Fire NOC of the tower was received on 07.03.2018.

6. It is clarified that construction of the project is complete and final demand letter dated 30.08.2018 was issued to the complainant, urging her to pay balance dues and to take possession of her booked unit.

7. It is further the plea of respondent that though the respondent was supposed to hand over the possession within a period of 36 months from the date of the signing of agreement or within 36 months from the date of start of construction whichever is later, alongwith grace period of three months, however the same was subject to force majeure conditions. Moreover, work of laying of pipelines for supplying water in Sector 68, Gurugram is not complete. It (respondent) not only faced water scarcity in completing the project but orders of Hon'ble High Court and NGT regarding ban of construction activities in the NCR caused delay.

8. So far as jurisdiction of this forum to try and entertain the present complaint is concerned, Section 31 empowers an aggrieved person to file complaint with the authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or rules and regulations made thereunder, against any promoter/allottee or real estate agent as the case may be. Section 18 mandates refund of the amount alongwith interest at such rate as may be prescribed under this Act, if the promoter fails to complete the project or unable to give possession of apartment/unit etc.....

a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein ; or


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b) due to discontinuance of this business as a developer on account of suspension or revocation of the registration under this Act or for any other reasons;

9. According to section 71, Adjudicating Officer is appointed for the purpose of adjudging compensation under section 12, 14,18 and section 19 of the Act. As complainant/buyer has sought for compensation as well as refund of the amount, this forum is fully competent to try this complaint.

10. There is no denial that BBA in this case was entered between the parties on 12.08.2013 and according to respondent it was obliged to offer possession within a period of 36 months of BBA or date of sanction of building plan. BBA between the parties was executed on 12.08.2013. There is no evidence on record to show as when building plans were sanctioned. Taking the date of BBA as date of counting due date for possession, it comes to 12.08.2016. As per respondent, same received occupation certificate on 02.08.2019 and offered possession on same day. In this way, the project is delayed for about 3 years.

11. It is well settled by plethora of authorities that a buyer cannot be made to wait for possession of his/her dream home, indefinitely or for such a long period like three years. So far as plea of the respondent that construction was delayed due to force majeure conditions i.e. for not completing laying of pipelines for supply of water by the govt agencies or scarcity of water in completing the project is concerned, all this was responsibility of respondent/developer to ensure that pipelines are laid in time. Although respondent referred orders passed by the Hon'ble High Court as well as NGT regarding ban of construction activities in NCR. No specific dates are mentioned by the respondent when construction work remained stayed due to orders passed in this regard.

12. Respondent has failed to explain delay in construction or in handing over possession of unit in question to the complainant. In this way, the complainant is well within her right to claim refund as well as compensation. Complaint in hands is, thus, allowed.

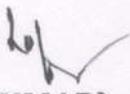
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13. Respondent is directed to refund amount received from complaint i.e. Rs.50,68,170.35p. within 90 days from today i.e. 19.08.2021 alongwith interest @ 9.30% p.a. from the dates of payment till realisation. The respondent is also burdened with cost of Rs.1,00,000/- to be paid to the complainant.

14. File be consigned to the Registry.


(RAJENDER KUMAR)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram
19.08.2021

Judgement uploaded on 07.09.2021