

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

Complaint no. :	1424/2019
Date of filing complaint:	28.03.2019
First date of hearing:	17.09.2019
Date of decision :	30.08.2022

Gurpawan Singh R/o:A-294, Shivalik , New Delhi	Complainant
Versus	
M/s VSR Infratech Pvt. Ltd. R/o: A-22, Hill View Apartments Vasant Vihar, New Delhi	Respondent

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Ankur Berry (Advocate)	Complainant
Ms. Shriya Takkar (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"114 Avenue", Sector 114 , Gurugram, Haryana
2.	Project area	2.968 acres
3.	Nature of the project	Commercial Colony
4.	DTCP license no. and validity status	72 of 2011 dated 27.07.2011 valid up to 20.07.2024
5.	Name of licensee	AMD Estate & Developers Pvt. Ltd.
10.	RERA Registered/ not registered	Registered vide no. 53 of 2019 dated 30.09.2019
12.	Unit no.	6B-25, 6 th floor (Page no. 39 of complaint)
13.	Unit area admeasuring	784.70 sq. ft. (Page no. 38 of complaint)
14.	Date of start of construction	Not provided
15.	Date of execution of agreement to sell	12.10.2012 (Page no. 37 of the complaint)
16.	Possession clause	32 Possession

		The company shall give possession of the said unit within 36 months of signing of this agreement or within 36 months from the date of start of construction of the said building whichever is later. (Page 42 of the complaint).
16.	Due date of possession	12.10.2015 (Calculated from the date of execution of agreement to sell)
17.	Total sale consideration	Rs.51,24,531/- (As per on page 171 of reply)
18.	Amount paid by the complainant	Rs.39,35,598/- (As per information provided by complainant)
19.	Occupation certificate /Completion certificate	17.02.2021 (As per on page 23 of reply)
20.	Offer of possession	23.03.2021 (As per on page 26 of reply)

B. Facts of the complaint:

3. In 2011, the complainant made an application for booking an apartment in the project "114 Avenue" and paid Rs.3,50,000/- as booking amount. Based on the application, the respondent sent an allotment letter dated 09.11.2011 and allotted a service apartment bearing no. 7A-19 admeasuring 784.700 sq. ft. for a total sale consideration of Rs. 53,64,693/-.

4. The complainant made timely payments and received another allotment letter dated 10.12.2011 with total sale consideration of Rs.53,81,839/-. The complainant has paid an amount of Rs. 39,35,598/- out of total consideration and the same is duly acknowledged by the respondent.
5. The respondent after taking more than 30% of the total sale consideration entered into a registered space buyer agreement with the complainant dated 10.10.2012 and promised to deliver the possession of the service apartment space vide its clause 31 within 36 months from the date of execution of the agreement.
6. The complainant took a loan from ICICI Bank of Rs. 30,00,000/- to pay timely instalments as per the space buyer agreement to the respondent but till date the respondent has failed to offer the possession of the service apartment allotted to complainant. That due to delay in handing over the possession by the respondent, the complainant has suffered huge loss by paying interest on the loan taken against the service apartment. The complainant paid timely payments against the loan taken for paying the installments as per the payment plan to the respondent.
7. The project is still not anywhere near completion. The complainant prays to the authority to kindly direct the respondent to refund the hard-earned money along with interest.

C. Relief sought by the complainant:

8. The complainant has sought the following relief(s):
 - i. Direct the respondent to refund the amount of Rs. 39,35,598/- along with interest.

D. Reply by respondent:

The respondent-builder by way of written reply made the following submissions:

9. That the delay caused in the construction of the project was not due to the acts of the respondent but due to the factors beyond its control. The following factors caused the delay in the construction of the project, not within the control of the respondent and are force majeure events.
10. That one of the major reasons for the delay was the non-completion of Dwarka expressway a part of master plan 2031. The Dwarka expressway was plagued by land acquisition issues, causing a delay in the completion of the basic infrastructure. This is a major hindrance in the real estate development in the belt. Because of non-availability of basic infrastructure, which was supposed to be developed by competent authorities, it is very difficult for the real estate developers to meet the timeline.
11. Further, No-Construction notice was issued by the Hon'ble National Green Tribunal for period of several weeks resulting in a cascading effect. In the year 2017, 2018 and 2019 there was a blanket ban on construction and allied activities during the months of October and November, causing massive interruption in construction work. There being a shutdown of construction for at least a few months approximately each year. Thus since 2017, the promoter suffered for months of stoppage of construction work till 2019.
12. The building plans were approved in January 2012 and company had timely applied for environment clearances to competent authority, which was later forwarded to State Level Environment

Impact Assessment Authority, Haryana. Despite of best endeavours the respondent only got environment clearance certificate on 28.05.2013 i.e., almost after a period of 17 month from the date of approval of building plans.

13. It was further submitted that the Government of India declared nationwide lockdown due to COVID 19 Pandemic effective from 24.03.2020. The construction and development of the project was affected due to that reason as well. This Hon'ble Authority has vide its order dated 26.05.2020 also invoked the force majeure clause.
14. That the delay in the construction of the project due to the force majeure events, do not go against the provisions of the flat buyer's agreement and the agreement itself allows the delays caused by the factors beyond the control of the respondent.
15. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be denied on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

16. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

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.

E. II Subject matter jurisdiction

17. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be.

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

18. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
19. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court

in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) RCR (c) 357* and reiterated in case of *M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020* decided on 12.05.2022 wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

20. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Objection regarding force majeure condition:

21. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. &*

Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020 dated 29.05.2020 has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."

22. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 12.10.2015 and is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainant:

- G.1 Direct the respondent to refund the amount of Rs. 39,35,598/- along with interest.**

23. It is not disputed that the complainant booked a unit in the above-mentioned project of the respondent leading to execution of buyer's agreement on 12.10.2012. The total sale consideration of the unit was fixed Rs. 51,24,531/-. The complainant paid a sum of Rs. 39,35,598/- against the total price. The due date of possession as per agreement for sale as mentioned in the table above was 12.10.2015 and there is delay of 3 year 5 months on the date of

filing of the complaint. So, keeping in view the fact that the allottee/ complainant wishes to withdraw from the project and is demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein., the matter is covered under section 18(1) of the Act of 2016.

24. The occupation certificate /part occupation certificate of the buildings/towers where allotted unit of the complainant is situated was received after filing of application by the complainant for return of the amount received by the promoter on failure of promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. The complainant-allottee has already wished to withdraw from the project and has become entitled to his right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter failed to comply or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoter is liable to return the amount received by him from the allottee in respect of that unit with interest at the prescribed rate.

Further in the judgement of the Hon'ble Supreme Court of India in the cases of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022. it was observed

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed

25. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
26. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under section 71 read with section 31(1) of the Act of 2016.
27. The authority hereby directs the promoter to return the amount received by him i.e. Rs. 39,35,598 /- with interest at the rate of 10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of

the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*

28. The occupation certificate /part occupation certificate of the buildings/towers where allotted unit of the complainant is situated was received after filing of application by the complainant for return of the amount received by the promoter on failure of promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. The complainant-allottee has already wished to withdraw from the project and has become entitled to his right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter as the promoter fails to comply or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoter is liable to return the amount received by him from the allottee in respect of that unit with interest at the prescribed rate. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.

G. Directions issued the Authority:

29. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the

functions entrusted to the Authority under section 34(f) of the Act of 2016:

- i. The respondent/ promoter is directed to refund the amount of Rs.39,35,598/- received by it from the complainant along with interest at the rate of 10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules 2017 from the date of each payment till the actual date of refund of the deposited amount.
 - ii. A period of 90 days is given to the respondent to comply with the orders of authority and failing which legal consequences would follow.
30. Complaint stands disposed of.
31. File be consigned to the Registry.


(Vijay Kumar Goyal)

Member
Haryana Real Estate Regulatory Authority, Gurugram


(Dr. KK Khandelwal)

Chairman

Dated: 30.08.2022

