

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

Complaint no.	:	2395 of 2019
Date of filing complaint:		24.06.2019
First date of hearing:		06.12.2019
Date of decision		24.03.2023

NAME OF THE BUILDER		VSR Infratech Private Limited	
PROJECT NAME		68 Avenue	
S. No.	Case No.	Case title	APPEARANCE
1	CR/2395/2019	Faisal Mumtaz V/S M/s VSR Infratech Pvt. Ltd.	None Ms. Shriya Takkar Sh. Manish Tanwar
2	CR/2396/2019	Faisal Mumtaz V/S M/s VSR Infratech Pvt. Ltd.	None Ms. Shriya Takkar Sh. Manish Tanwar

CORAM:

Shri Sanjeev Kumar Arora

Member**ORDER**

1. This order shall dispose of all the 2 complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
- The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, 68 Avenue (commercial colony) being developed by the same respondent/promoter i.e., M/s VSR Infratech Private Limited. The terms and conditions of the buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of Refund the entire amount along with interest and the compensation.
 - The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	VSR Infratech Private Limited "68 Avenue" Sector-68, Gurugram.
Possession Clause: - 31 Time of handing over the Possession <i>"The Company will, based on its present plans and estimates, contemplates to entitled possession of Said Unit to the Allottee(s) within 36 months of signing of this Agreement advertise or within 36 months from the date of start of construction of the said Building whichever is later with a grace period of 3 months, subject to force majeure events or governmental action/inaction .."</i>	
(Emphasis supplied)	
Occupation certificate: - ➤ OC received dated 02.08.2019	
Note: Grace period is included while computing due date of possession.	



Sr. No	Complaint No., Case Title, and Date of filing of complaint	Reply status	Unit No.	Date of apartment buyer agreement	Due date of possession	Total Consideration / Total Amount paid by the complainant(s)	Relief Sought
1.	CR/2395/2019 Faisal Mumtaz V/S M/s VSR Infratech Pvt. Ltd. Date of Filing of complaint 24.06.2019	Reply Received on 10.01.2020	SA5-43, 5 th floor, Tower A (Page 31 of the complaint)	22.05.2013	22.05.2016 (Calculated as per SBA)	TSC: - Rs. 50,88,998 /- AP: - Rs. 47,69,055.27/-	-Refund the entire amount along with interest -Details of EDC/IDC - Compensation
2.	CR/2396/2019 Faisal Mumtaz V/S M/s VSR Infratech Pvt. Ltd. Filing of complaint 24.06.2019	Reply Received on 10.01.2018	SA6-52, 6 th floor, Tower A (Page 31 of the complaint)	22.05.2013	22.05.2016 (Calculated as per SBA)	TSC: - Rs. 58,24,460 /- AP: - Rs. 54,58,272 /-	Refund the entire amount along with interest -Details of EDC/IDC - Compensation

Note: In the table referred above certain abbreviations have been used.

They are elaborated as follows:

Abbreviation Full form

TSC Total Sale consideration

AP Amount paid by the allottee(s)

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the apartment buyer's agreement

executed between the parties in respect of said unit for not handing over the possession by the due date, seeking award of refund the entire amount along with interest and compensation.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/2395/2019 Faisal Mumtaz V/S M/s VSR Infratech Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua refund the entire amount along with interest and compensation.

A. Project and unit related details

7. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

CR/2395/2019

Faisal Mumtaz V/S M/s VSR Infratech Pvt. Ltd.

Sr. No.	Particulars	Details
1.	Name of the project	"68 Avenue", Sector 68, Gurgaon
2.	Project area	3.231 acres

3.	Nature of the project	Commercial Colony
4.	DTCP license no. and validity status	04 of 2012 dated 23.01.2012
5.	Name of licensee	Sh. Yad Ram and
6.	RERA Registered/ not registered	119 of 2017 dated 28.08.2017
7.	RERA registration valid up to	30.06.2018
8.	Date of Allotment Letter	11.06.2012 (Page 80 of the reply)
9.	Unit no.	SA5-43, 5 th floor, Tower A (Page 31 of the complaint)
10.	Unit area admeasuring (super area)	627.110 sq. ft. (Page 31 of the complaint)
11.	Space Buyer's Agreement	Executed on 22.05.2013
12.	Possession clause	31. Possession Time and Compensation <i>"The company will be based on its present plans and estimates contemplates to offer possession of the said unit to the allottee(s) within 36 months of signing of this Agreement or within 36 months from the start of construction of the said building whichever is later with a grace period of 3 months, subject to force majeure events or governmental action/inaction".</i> (Page 38 of the complaint)
13.	Due date of possession	22.05.2016

		(Calculated as per SBA)
14.	Total sale consideration	Rs. 50,88,998/- (Page 32 of the complaint)
15.	Amount paid by the complainants	Rs. 47,69,055.27/- (As per Statement of Account on page 66 of the complaint)
16.	Occupation certificate /Completion certificate	02.08.2019 (Page 46 of the reply)
17.	Offer of Possession	01.01.2019 but the same was emailed to complainant on 17.05.2019 (Page 63 of the complaint)
18.	Delay in handing over possession till offer of possession	2 years 4 months 09 days (if 01.01.2019 considered as date of offer of possession) 2 years 8 months 25 days (if 17.05.2019 considered as date of offer of possession)

B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -
- I. That the complainant came to know about the commercial project (service apartment) 68 Avenue situated at Sector - 68, Gurugram promoted by the respondent company. The complainant was willing to be in touch with his root that is why he decided to book service apartment in the project of them for personal use, as and when required during visit in India, for himself and family.
 - II. That the complainant booked a service apartment admeasuring 627 sq. ft. bearing service apartment no. SA5-43 in project 68 avenue and

- issued a cheque of Rs.4,00,000/- dated 24.03.2012 drawn on CITI bank, as booking amount and also signed a pre-printed application form. The service apartment was purchased under the construction link payment plan for sale consideration of Rs.50,88,998/-. Thereafter, the respondent issued payment receipt of booking amount on 07.04.2012.
- III. That the respondent sent an allotment letter of commercial unit on 11.06.2012. The buyer's agreement was executed between the parties on 22.05.2013. As per term number 31 of the agreement, the respondent has to give the possession of 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 with a grace period of 3 months. That agreement was executed on 22.05.2013 and construction was commenced on 01.08.2012, therefore due date of possession was 22.05.2016.
- IV. That on 10.12.2013, the respondent sent a statement of account against the subject unit, which shows that till date 18.10.2013 and the complainant had paid Rs.32,20,211 /-. Thereafter, the complainant continued to pay the remaining installment as per the payment schedule of the builder buyer agreement and has already paid the more than 93% amount i.e., Rs.47,69,055/- till date 08.12.2014 along with interest and other allied charges of actual purchase price, but when complainant observed that there is no progress in construction of subject service apartment for a long time, he raised his grievance to the respondent. Though complainant was always ready and willing to pay the remaining installments provided that there is progress in the construction of service apartment.

- V. That in August, 2016 the complainant was regularly visiting to the office as well as construction site, writing emails and calling to the concern persons and making efforts to get the possession of allotted service apartments, but all went in vain, in spite of several visits by the complainant and his family and friends. The complainant never been able to understand/know the actual status of construction. Though tower seems to be built up but no progress is observed on finishing and landscaping work. That construction was commenced on 01.08.2012 and respondent/builder suppose to give the possession of unit within 36 months i.e. 01.08.2015.
- VI. That on 16.05.2019 the respondent sent an email for offer of possession mentioning the respondent sent an email on 16.05.2019 for offer of possession mentioning wrong date / back dated i.e. 01.01.2019 along with statement of account and demand. As per statement of account the complainant had paid Rs. 47,69,055 /- .
account the complainant had paid Rs. 47,69,055 /- .
- VII. That the respondent raised the unreasonable demand on the name of different heads i.e. Rs.15,000/- against administrative charges, Rs.1,35,828/- against advance maintenance charges for 18 months, Rs.74,124/- against GST on these demands and Rs.1,25,766/- against contingency charges.
- VIII. That the main grievance of the complainant in the present complaint is that in spite of complainant paid more than 90% of the actual amounts of service apartments and ready and willing to pay the remaining amount, the respondent has failed to deliver the possession of service

apartment on time and now refusing to pay interest on delay possession and demanding unjustified/illegal demands.

- IX. That due to above acts of the respondent and of the terms and conditions of the builder buyer agreement, the complainant have been unnecessarily harassed mentally as well as financially, therefore the opposite party is liable to compensate the complainant on account of the aforesaid act of unfair trade practice. It is pertinent to mention here that the respondent demanding Rs.123,766/- against air conditioning charges (ACC) @200 per sq. ft., Rs.88,036/- against power back up charges (PBC), Rs.47,162/- against electric connection charges (ECC), which are very high rate and without any justification.
- X. That for the first time cause of action for the present complaint arose in August, 2016, when the respondent has failed to handover the possession of the service apartment as per the buyer's agreement. Further the cause of action arose in July, 2017 when the respondent failed to handover the possession of service apartment as per promise. Further the cause of action again arose on various occasions, including on: a) December 2017; b) January, 2018; c) June, 2018; d) November, 2018; e) March, 2019, and on many time till date, when the protests were lodged with the respondent about its failure to deliver the project and the assurances were given by them that the possession would be delivered by a certain time. The cause of action is alive and continuing and will continue to subsist till such time as this authority restrains the respondent by an order of injunction and/or passes the necessary orders.

C. Relief sought by the complainant: -

9. The complainant has sought following relief(s):

- I. Direct the respondent to handover the possession of service apartment with occupation certificate and specifications given in buyer's agreement and also direct the respondent to pay interest for every month of delay from due date of possession till the handing over of the possession.
- II. Direct the respondent to refrain from demanding Rs. 1,35,828/- against advance maintenance charges for 18 months, and Rs. 15,000/- against administrative charges, and Rs. 1,25,766/- against contingency charges.
- III. Direct the respondent to refrain from demanding Rs. 74,124 against GST on these demands.
- IV. Respondent party may kindly be directed to complete and seek necessary governmental clearances regarding infrastructural and other facilities including road, water, sewerage, electricity, environmental etc. before handing over the physical possession of the service apartments.

D. Reply by the respondent

10. The respondent by way of written reply made following submissions:

- I. That the complainant has filed the present complaint under rule 28 of the said rules and is seeking interest for delay in handing over possession. Further the complainant is also seeking directions that the respondents be refrained from demanding administrative charges, advance maintenance charges, contingency charges and GST on all the

charges , the project of the respondent is registered with this regulatory authority, the complaint, if any, is still required to be filed before the adjudicating officer under rule 29 of the said rules and not before this regulatory authority under rule 28 as this regulatory authority has no jurisdiction whatsoever to entertain such complaint and as such the complaint is liable to be rejected.

- II. That the occupation certificate was applied for the current phase: tower A, of the project on 31.07.2017 and as per the Haryana Real Estate (Regulation and Development) Rules, 2017, the current phase is beyond the scope of this authority. However, while applying for the RERA registration of the whole project, the current phase was also included despite the same being beyond the ambit of RERA. It is pertinent to mention here that while applying for the RERA registration the respondent has not given any specific date for handing over of the possession.
- III. That the respondent has received the occupation certificate on 02.08.2019. It is pertinent to mention here that delay has also been caused as the occupation certificate could not be issued since there was an passed by the Hon'ble Punjab and Haryana in the matter titled as: Mukesh Sharma vs. State of Haryana and ors. (CWP No. 23839 of 2014) that no occupation certificate be issued in the sector/area or for building where water supply connection has not been made available

by HUDA. It is clarified that these directions are in relation to sectors 68-80, Gurugram only. However, subsequently several visits have been made and the now the problem of water has been dealt with and the respondent has received the occupation certificate.

- IV. That the space buyer's agreement was entered into between the parties and, as such, the parties are bound by the terms and conditions mentioned in the said agreement.
- V. That in the present case the complainant, and as per clause 31 of the space buyer's agreement dated 22.05.2013, 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 along with a grace period of 3 months. That the agreement was executed between the parties on 22.05.2013 and the construction of the project started on 16.08.2012. That in the present case the project was delayed due to force majeure conditions beyond the control of the respondent and the same are covered under clause 31.
- VI. That without prejudice to the above submissions with respect to the certificate of registration under the Act. That despite exercising diligence and continuous pursuance of project to be completed, project of respondent company could not be completed as prescribed for the following reasons:

- That on 19.02.2013 the office of the executive engineer, Huda Division No. II, Gurugram vide memo no. 3008-3181 had issued instruction to all developers to lift tertiary treated effluent for construction purpose for sewerage treatment plant Behrampur. Due to this instruction, the company faced the problem of water supply for a period of 6 months. Time and again various orders passed by the NGT staying the construction.
- Orders passed Hon'ble High Court of Punjab and Haryana wherein the court has restricted use of groundwater in construction activity and directed use of only treated water from available seaweed treatment plants. That however there was no sewage treatment plant available which led to scarcity of water and further delayed the project. That said order coincided with launch of project and caused a huge delay in starting project itself.
- That evidently there was lot of delay on part of government agencies in providing relevant permissions, licenses approvals and sanctions for project which resulted in inadvertent delay in the project which constitute a force majeure condition, as delay caused in these permissions cannot be attributed to respondent, for very reason that respondent, for very reason that respondent has been very prompt in making applications and replying to objections if any raised for obtaining such permissions.

- Despite the best efforts by the respondent to hand over timely possession within the proposed time period of said apartment booked by complainant hearing respondent could not do so due to reasons beyond control of the respondent company.
- That delay has also been caused as the occupation certificate could not be issued since there was an passed by the Hon'ble Punjab and Haryana in the matter titled as, Mukesh Sharma vs. State of Haryana and ors. (CWP No. 23839 of 2014) that no occupation certificate be issued in the sector/area or for building where water supply connection has not been made available by HUDA. It is clarified that these directions are in relation to Sectors 68-80, Gurugram only.
- That the sudden surge requirement of labour and then sudden removal has created a vacuum for labour in NCR region. That the projects of not only the respondent but also of all the other developer/builder has been suffering due to such shortage of labour and has resulted in delays in the projects beyond the control of any of the developers.
- That the said fact of labour shortage can be substantiated by way of newspaper articles elaborating on the above-mentioned issues hampering the construction projects in NCR. That even today in current scenario where innumerable projects are under construction all the developers in the NCR region are suffering from the after-effects of labour shortage on which the whole

construction industry so largely depends and on which the respondent have no control whatsoever

- That the Ministry of environment and Forest and the Ministry of mines had imposed certain restrictions which resulted in a drastic reduction in the availability of bricks and availability of sand which is the most basic ingredient of construction activity. That said ministries had barred excavation of topsoil for manufacture of bricks and further directed that no more manufacturing of bricks be done within a radius of 50 km from coal and lignite-based thermal power plants without mixing 25% of ash with soil.
- That in addition the Government of India has on 08.11.2016 declared demonetization which severely impacted the operations and project execution on the site as the labourers in absence of having bank account were only being paid by cash by the sub contractors of the company and on the declaration of the demonetization, there was a huge chaos which ensued and resulted in the labours not accepting demonetized currency after demonetization.
- That in July 2017 the Government of India further introduce a new regime of taxation under the goods and service tax which further created chaos and confusion owing the lack of clarity in its implementation. That ever since July 2017 since all the materials required for the project of the company were to be taxed under

the new regime it was an uphill task of the vendors of building materials along with all other necessary materials required for construction of the project wherein the auditors and CA's across the country were advising everyone to wait for clarities to be issued on various unclear subject of this new regime of taxation which further resulted in delays of procurement of materials required for the completion of the project.

- VII. That from the perusal of the above, it is clear that as per the clause 31 the complainant was to complete the construction of the said project within 36 months (3 years) from the date of signing of the agreement i.e. 22.05.2013 or within 36 months from the date of start construction of the said building i.e. 16.08.2012 whichever is later with a grace period of 3 months, subject to force majeure events or government action/in action or due to other reasons mentioned in clause 31. It is worth mentioning here that there was a stay on construction in furtherance to the direction passed by the NGT. In furtherance of the order passed by the NGT, the construction activities at the project site was also delayed for several other reasons as stated in the aforesaid paragraphs and which were clearly prescribed under Clause 31 of the agreement.
- VIII. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can

be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

11. The application 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

12. 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

13. 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.

14. 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 complainants at a later stage.

F. Objections raised by the respondent due to delay in constructing the project

F.1 Objection regarding force majeure.

15. The respondent stated that the part occupation certificate was granted by the competent authorities after due inspection and verification on 15.01.2019. It is pertinent to mention here that delay has also been caused as the OC could not be issued since Hon'ble Punjab and Haryana . The authority is of the considered view that if there is lapse on the part of any competent authority concerned in granting the occupation certificate within reasonable time then the respondent should approach the competent authority for getting the time period be declared as 'zero time period' for computing delay in completing the project. However, for the time being, the authority is not considering this time period as zero period

and the respondent is liable for the delay in handing over possession as per provisions of the Act.

16. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetization, water supply for a period of 6 months, Hon'ble High Court of Punjab and Haryana wherein the Hon'ble Court has restricted use of groundwater in construction activity and directed use of only treated water from available seaweed treatment plants, stay of construction by order of National Green Tribunal, banned construction in Delhi NCR, demonetization, various orders passed by NGT but all the pleas advanced in this regard are devoid of merit. First of all the unit in question was allotted in the year 2012. These periods were for very short duration of time. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainants

G. 1 Direct the respondent to handover the possession of service apartment with occupation certificate and specifications given in buyer's agreement and also direct the respondent to pay interest for every month of delay from due date of possession till the handing over of the possession.

17. The present complaint was disposed off vide proceeding dated 13.10.2021 with an order of delay possession charges along with prescribe rate of interest i.e 9.30%. A notice was sent for rectification of clerical error in proceeding dated 13.10.2021 to rectify/correct the due date of possession

which was wrongly recorded as 11.05.2017. Whereas the correct due date of possession is 22.05.2016. The complainants intends to continue with the project and is seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

18. The apartment buyer's agreement was executed between the parties and as per the possession clause 8.1 the possession of the unit was to be handed over by August 2019. The clause 8.1 of the buyer's agreement is produced as below:

31. Possession Time and Compensation

"The company will be based on its present plans and estimates contemplates to offer possession of the said unit to the allottee(s) within 36 months of signing of this Agreement or within 36 months from the start of construction of the said building whichever is later with a grace period of 3 months, subject to force majeure events or governmental action/inaction".

19. **Admissibility of grace period:** As per clause 31 of buyer's agreement dated 22.05.2013, the respondent promoter has proposed to handover the possession of the flat within 36 months of signing of this Agreement or within 36 months from the start of construction of the said building

whichever is later with a grace period of 3 months. The due date comes out to be 22.05.2016.

20. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. However, proviso to section 18 provides that where an allottee(s) does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest.

21. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 13.10.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%. Since there was a default with regard to the due date on the date 13.10.2021 hence the case was taken up and the rate of interest is considered of that date only.

22. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

23. The occupation certificate was obtained on 02.08.2019 and the respondent sent letter of fit out vide email dated 01.01.2019 and the same was sent by email on 16.05.2019 .

24. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e. 22.05.2016 till the occupation certificate i.e 02.08.2019 plus two months i.e 02.10.2019 at the prescribed rate i.e., 10.60 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of

the rules. The respondent also directed to handover the possession of the allotted unit to the complainant completes in all aspects as per specifications of buyer's agreement.

G. II Direct the respondent to refrain from demanding Rs. 1,35,828/- against advance maintenance charges for 18 months, and Rs. 15,000/- against administrative charges, and Rs. 1,25,766/- against contingency charges.

25. The respondent is right in demanding advance maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.
26. The registration of property at the registration office is mandatory for execution of the conveyance (sale) deed between the developers (seller) and the homebuyer (purchaser). Besides the stamp duty, homebuyers also pay for execution of the conveyance/sale deed. This amount, which is given to the developers in the name of registration charges, is significant. The authority considering the pleas of the developer-promoter directs that a nominal amount of up to Rs.15000/- can be charged by the promoter - developer for any such expenses which it may have incurred for facilitating the said transfer as has been fixed by the DTP office in this regard.

27. The complainant has alleged that the respondent has charged Rs. 1,25,766/- with regard to contingency charges and the respondent has also charged Rs. 94,325 on account of IFMS charges. As per clause 42 of the buyer's agreement

The allottee shall also deposit with the company a sum of Rs. 150/- per sq. ft. by way of Interest Free Maintenance Security. The allottee also require to pay sum as determined by company by way of Interest Free Capital Replacement Fund in case of Serviced Apartments, SOSA and Miniplex as per annexure IV

28. So, they are not liable to take charges under the head of contingency charges as the purpose of collecting both the amounts the purpose is same as both the aforesaid charges are charges to meet the exigencies arising in future and to meet demand against such capital expenditures. So, it is not only unethical on the part of the developer but also illegal.

G.III Direct the respondent to refrain from demanding Rs. 74,124 against GST on these demands.

29. In the instant complainant, the respondent is demanding Rs. 74,124/- charged amount on pretext of GST from the complainant.

30. The Authority laid reliance on judgement dated 04.09.2018 in *complaint no. 49/2018, titled as Parkash Chand Arohi Vs. M/s Pivotal Infrastructure Pvt. Ltd.* passed by the Haryana Real Estate Regulatory Authority, Panchkula wherein it has been observed that where the possession of the flat in term of buyer's agreement was required to be

delivered on 1.10.2013 and the incidence of GST came into operation thereafter on 01.07.2017. So, the complainant cannot be burdened to discharge a liability which had accrued solely due to respondent's own fault in delivering timely possession of the flat. The aforesaid order was upheld by Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh in **appeal no. 21 of 2019**. The relevant para is reproduced below:

"93. This fact is not disputed that the GST has become applicable w.e.f. 01.07.2017. As per the first Flat Buyer's Agreement dated 14.02.2011, the deemed date of possession comes to 13.08.2014 and as per the second agreement dated 29.03.2013 the deemed date of possession comes to 28.09.2016. So, taking the deemed date of possession of both the agreements, GST has not become applicable by that date. No doubt, in Clauses 4.12 and 5.1.2 the respondent/allottee has agreed to pay all the Government rates, tax on land, municipal property taxes and other taxes levied or leviable now or in future by Government, municipal authority or any other government authority. But this liability shall be confined only up to the deemed date of possession. The delay in delivery of possession is the default on the part of the appellant/promoter and the possession was offered on 08.12.2017 by that time the GST had become applicable. But it is settled principle of law that a person cannot take the benefit of his own wrong/default. So, the appellant/promoter was not entitled to charge GST from the respondent/allottee as the liability of GST had not become due up to the deemed date of possession of both the agreements."

31. In the instant complainant, the due date of possession comes out to be 22.05.2016 which is prior to the date of coming into force of GST i.e., 01.07.2017. In view of the above, the Authority is of the view that the respondent/promoter is not entitled to charge GST from the complainant/allottee as the liability of GST had not become due up to the due date of possession as per the flat buyer's agreement. The Authority is of further view that in case of late delivery by the promoter only the

difference between post GST and pre-GST should be borne by the promoter. The promoter is entitled to charge from the allottees the applicable combined rate of VAT and/or service tax. However, it further directs that the difference between post GST and pre-GST shall be borne by the promoter.

G.IV Respondent party may kindly be directed to complete and seek necessary governmental clearances regarding infrastructural and other facilities including road, water, sewerage, electricity, environmental etc. before handing over the physical possession of the service apartments.


32. The respondent has already obtained the occupation certificate on 02.08.2019 . Therefore, the respondent has already completed all the facilities.

H. Directions of the authority

46. 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 function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to pay interest at the prescribed rate of 9.30% p.a or every month of delay from the due date i.e 22.05.2016 till the occupation certificate i.e 02.08.2019 plus two months i.e 02.10.2019 as per proviso to section 18(1) of the Act read with rule 15 of the rules.

- ii. The respondent is directed to handover the possession of the allotted unit to the complainant completes in all aspects as per specifications of buyer's agreement within three months from date of this order.
 - iii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
 - iv. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
47. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
 48. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
 49. Files be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.03.2023