

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

Complaint no.	:	6336 of 2022
Date of filing	:	03.10.2022
Date of decision	:	01.12.2023

1. Charu Bansal 2. Rekha Agrawal Both are resident of : - F-101, Corona Optus, Sector-37-C, Gurgaon - 122001	Complainant
Versus	
M/s VSR Infratech Pvt Ltd Regd. office: Corporate Office Ground Floor Plot No.-14 Sec-44 Gurgaon - 122003	Respondent
CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Charu Bansal	Complainant in person
Ms. Shriya Takkar (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 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 allottees as per the agreement for sale executed *inter se*.

A. Unit and project details

2. The particulars of unit, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, 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.	Nature of the project	Commercial project
3.	DTCP license no. and validity status	72 of 2011 dated 27.07.2011 valid up to 20.07.2024
4.	Registered	Registered 53 of 2019 dated 24.09.2019 Valid till 31.12.2019 Vide 13 of 2020 dated 30.09.2019 Valid till 31.12.2020
5.	Allotment Letter	21.04.2017 (Page 29 Of Reply)
6.	Unit no.	FC -16
7.	Area	506 SQ. FT.
8.	Date of builder buyer agreement	26.04.2017 (Page 5 of complaint)

9.	Possession clause	<i>POSSESSION OF THE PREMISES / UNIT:</i> 32. <i>...36 months of signing of this agreement or 36 months from the date of start of construction whichever is later.</i>
10.	Due date of possession	26.10.2020 26.04.2020 + 6 months grace period w.r.t. COVID (Calculated from the date of signing of agreement as the exact date of start of construction is not available on record)
11.	Total consideration	sale Rs. 70,14,984/- (Page 58 of reply)
12.	Amount paid	Rs. 75,73,113/- [As per page 41 of complaint and as confirmed by the respondent at page 5 annexure R-9 of application filed on 17.11.2023]
13.	Occupation certificate	Obtained on 28.08.2023 (As per DTCP and as per application filed by respondent.)
14.	Offer of possession	Not offered

B. Fact of the complaint

3. The complainants booked a commercial unit in the project namely "114 Avenue" located in sector 114, Gurgaon. They allotted a unit bearing FC-16, admeasuring 506 sq. ft. for a total sale consideration of Rs. 70,14,984/-

4. That after several requests the respondent executed the buyer's agreement on 26.04.2017. As per clause 32 of the buyer's agreement the unit was to be handed over 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. As per this the due date comes out to be 26.04.2020.
5. That mall is still incomplete with a significant amount of pending construction work. Even the shops in the food court have not been built. They continued to pay the amount on good faith but all the demands made by the respondent were not as per the level of construction.
6. They have paid an amount of Rs. 75,73,113/- till date. They have made payments on the demands of the respondent and the same were duly accepted and receipts were provided against the payments made.
7. That as huge time had been lapsed, they therefore made several calls to the customer care and marketing departments to seek the status of the construction, but they were never provided with a satisfactory response and the respondent's officials made false and frivolous statements and gave false assurances that the construction is in full swing and the unit shall be handed over within the agreed time.
8. That the unit has been charged on the basis of super area. No mention of carpet area has been made at any stage but was verbally assured at the time of signing MOU that it would be around 50%. The chargeable area/super area has been increased by 27% without the consent of the buyers-

from 506.12 sq. ft. to 642.93 sq. ft. On repeated exchange of mails, the carpet area has been stated to be 215 sq. ft. only around 33.5% as against the promised 50%.

9. That the cause of action arose when the respondent failed to handover the possession of the unit as agreed upon. The complainants have filed the present complaint for refund of the total paid up amount.

C. Relief sought by the complainant:

10. The complainants have sought following relief(s):

- 1) Direct the respondent to cancel the allotment on account of significant delay in handing over of possession.
- 2) Direct the respondent to refund Rs. 75,73,113/ along with prescribed rate of interest paid by the complainants

11. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

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

12. That the respondent has acted in accordance with the terms and conditions of the space buyer's agreement executed between the parties on their own free will. The complainants were duly informed about the

Schedule of possession as per Clauses 32 of the space buyer's agreement entered into between the parties.

13. That in the present case as per the space buyer's agreement dated 12.10.2012, the respondent was supposed to hand over the possession within a period of 36 months of signing of this Agreement i.e. 12.10.2012 or within 36 months from the date of start of construction of the said building i.e. in the year 2012 whichever is later. It is submitted that the later date is the date of execution of the agreement i.e. 12.10.2012 and the possession date comes out to be 12.10.2015. However, the said timeline was subject to force majeure conditions. That it is submitted that as per Clause 32 of the buyer's agreement which clearly states that respondent shall be entitled to extension of time for delivery of possession of the said premises if such performance is prevented or delayed due to conditions as mentioned therein. That despite exercising diligence and continuous pursuance of project to be completed, project of the respondent could not be completed as prescribed for the following reasons:

- a. That it is pertinent to mention here that the project in question was launched in the year 2010 and is right on the Dwarka expressway, which was supposed to be completed by the State of Haryana by the end of 2012. That the star purpose of launching the project and object of the complainants buying the project was the connectivity of Dwarka expressway which was

promised by the State Government to be completed in the year 2012. That it is reiterated that the only approach road to the project in this Dwarka Expressway which is still not complete and is likely to take another year or so. There being no approach road available it was initially not possible to make the heavy trucks carrying construction material to the project site and after a great difficulty and getting some kacha paths developed, materials could be supplied for the project to get completed which took a lot extra time. Even now the Govt has not developed and completed the basic infrastructure, despite the fact that EDC/IDC were both deposited with the State Government on time. The Dwarka Expressway was earlier scheduled to be completed by the year 2012, by the State Government of Haryana, but later failed to develop the said road. In the year 2017, NHAI (National Highway Authority of India) joined to complete the Dwarka Expressway, but again both State Government as well as NHAI again missed the deadlines and still the Expressway is incomplete, now likely to be completed by the year 2022, if the deadline is adhered to be these agencies. That in this view of the circumstances as detailed above the

respondent developer can by no means be expected to complete a project which does not even have an approach road to be constructed by the State. Thus the respondent cannot be held accountable for the delay in the project and State of Haryana and NHAI, are responsible, hence answerable for the delay in completing Dwarka expressway, which in turn has caused the delay of the present project. That completion of Dwarka expressway which in turn affected the completion of the project in question was beyond the control of the Respondent. Thus, for just and fair adjudication of this complaint both State of Haryana and NHAI are necessary parties to the present proceedings for the purpose of causing the delay in the project and thus they are jointly and severally liable for the delay of the project and pay compensation to the complainant.

b. It is submitted that in the year, 2012 on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) were regulated. The Hon'ble Supreme Court directed framing of Modern Mineral Concession Rules. Reference in this regard may be had to the judgment of "*Deepak Kumar v. State of Haryana, (2012) 4 SCC 629*". The

competent authorities took substantial time in framing the rules and in the process the availability of building materials including sand which was an important raw material for development of the said Project became scarce in the NCR as well as areas around it.

- c. The company faced the problem of sub soil water which persisted for a period of 6 months and hampered excavation and construction work. The problem still persists, and we are taking appropriate action to stop the same.
- d. The company is facing the labour problem for last 3 years continuously which slowed down the overall progress of the project and in case the company remains to face this problem in future, there is a probability of further delay of project.
- e. The contractor of the project stopped working due to his own problems and the progress of project was completely at halt due to stoppage of work at site. It took almost 9 months to resolve the issues with contractor and to remobilize the site.
- f. The building plans were approved in January 2012 and company had timely applied for environment clearances to competent authorities, which was later forwarded to State Level

Environment Impact Assessment Authority, Haryana. Despite of our best endeavour we 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.

- g. The typical design of fifth floor slab casting took a period of more than 6 month to design the shutting plans by structural engineer which hampered the overall progress of work.
- h. The infrastructure facilities are yet to be created by competent authority in this sector is also a reason for delay in overall project. The drainage, sewerage and other facility work not yet commenced by competent authority.
- i. It is worth mentioning here that there was a stay on construction in furtherance to the direction passed by the Hon'ble NGT. In furtherance of the above-mentioned order passed by the Hon'ble NGT.
- j. 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 Developers/Builders have 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 in addition the respondent states that this further resulted in increasing the cost of construction to a great extent.

- k. 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.
- l. That shortage of bricks in region has been continuing ever since and the respondent had to wait many months after placing order with concerned manufacturer who in fact also could not deliver on time resulting in a huge delay in project.
- m. That sand which is used as a mixture along with cement for the same construction activity was also not available in the abundance as is required since mining Department imposed

serious restrictions against manufacturing of sand from Aravali region.

- n. That this acute shortage of sand not only delayed the project of the answering Respondent but also shot up the prices of sand by more than hundred percent causing huge losses to Respondent.
- o. That in addition the current Govt. has on 8th Nov. 2016 declared demonetization which severely impacted the operations and project execution on the site as the labourers in absence of having bank accounts were only being paid via 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 labourers not accepting demonetized currency after demonetization.
- p. That in July 2017 the Govt. of India further introduced a new regime of taxation under the Goods and Service Tax which further created chaos and confusion owing to 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 material 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 subjects of this new regime of taxation which further resulted in delays of procurement of materials required for the completion of the project.

- q. That it is further submitted that there was a delay in the project also on account of violations of the terms of the agreement by several allottees. That because of the recession in the market most the allottees have defaulted in making timely payments and this accounted to shortage of money for the project which in turn also delayed the project.
- r. It is further submitted that the Government of India declared nationwide lockdown due to COVID 19 Pandemic effective from 24th March 2020 midnight. It is submitted that the construction and development of the project was affected due to this reason as well. This Hon'ble Authority has vide its order dated 26.05.2020 invoked the force majeure clause.

14. That the OC has been received by the respondent company on 17.02.2021 for major part of the project in question despite the prevailing force

majeure conditions. That since the construction of the remaining part of the project including the unit of them was complete in all aspects. It is submitted that they have till date made a payment of Rs. 75,73,113/- as raised by the respondent in accordance with payment plan and the terms of the agreement.

15. All other averments made in the complaint were denied in toto.

16. 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

17. 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

18. 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

19. 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.

20. 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.

21. 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. (Civil Appeal no. 6745-6749 of 2021)*, 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."

22. 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. Findings on the objections raised by the respondent.
F.I. Objection regarding force majeure conditions:

23. The respondent/promoter has raised the contention that the construction of the tower in which the unit of the complainants is situated, has been delayed due to force majeure circumstances such as, labour had the problem which slowed down the construction, implementation of various social schemes by Government of India, demonetisation, lockdown due to covid-19 various orders passed by NGT, tax, mining activities and sub soil water, Dwarka expressway etc. But all the pleas advanced in this

regard are devoid of merit. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.

24. Subsequently, the respondent also took a plea that the construction at the project site was delayed due to Covid-19 outbreak. Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted floor within a period of 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 36 months. In the present case, the due date of possession is taken from the date of signing of agreement is 26.04.2017 as date of start of construction not available on record. The due date is calculated from the date of signing of agreement so, the due date of subject unit comes out to be 26.10.2020. **Further as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.** The completion date of the aforesaid project in which the subject unit is being allotted to them is 26.04.2020 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated

26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in such case the due date for handing over of possession comes out to **26.10.2020**.

G. Findings on the relief sought by the complainant

- ❖ Direct the respondent to refund Rs. 75,73,113/ along with prescribed rate of interest paid by the complainants
- ❖ Direct the respondent to cancel the allotment on account of significant delay in handing over of possession.

25. The above-mentioned reliefs being interconnected are being taken up together to ascertain the issue.

26. The complainants were allotted a unit in the project of the respondent for a total sale consideration of Rs. 70,14,984/-. The builder buyer's agreement was executed on 26.04.2017. The possession of the subject unit was to be handed over 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. The due date of completion of project and offering possession of the unit comes out 26.10.2020. But the respondent had not obtained the occupation certificate till the date of filing of complaint. The occupation certificate was obtained on 28.08.2023 and the possession has not been offered till date.

27. The complainants have filed the present complaint on 03.10.2022 seeking refund of the paid-up amount. They have filed the present complaint even before receiving the occupation certificate and before the possession was

offered. They had already made up their mind to seek refund of the paid-up amount by filing of the present complaint.

28. It has been averred by the respondent through reply at paragraph 14 of this order that respondent company has obtained the occupation certificate for major part of the project on 17.02.2021 but no document has been affixed with the reply to substantiate it. Further an application has been filed by respondent on 06.11.2023 wherein it has attached the copy of occupation certificate dated 28.08.2023. The subject unit of the complainants lies in the said tower the document "occupation certificate" of which has been filed. Therefore, the authority observes that occupation certificate for the subject unit has been received on 28.08.2023 and not on 17.02.2021.

29. Keeping in view the fact that the allottees-complainants wishes to withdraw from the project and 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.

30. The due date of possession as per agreement as mentioned in the table above is 26.10.2020. The occupation certificate of the buildings/towers where allotted unit of the complainants is situated is received after filing of application by the complainants 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 complainants-allottees have already wished to withdraw from the project and the allottees have become entitled of their 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 it from the allottees in respect of that unit with interest at the prescribed rate

31. 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 (Supra)***, 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.

32. 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 allottees 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 allottees, as the allottees wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.

33. This is without prejudice to any other remedy available to the allottees including compensation for which allottees may file an application for adjudging compensation with the adjudicating officer under section 71 read with section 31(1) of the Act of 2016.
34. The authority hereby directs the promoter to return the amount received by them i.e. Rs. 75,73,113/- with interest at the rate of 10.75% (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*.

H. Directions of the authority

35. 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 refund the amount received from the complainants i.e., Rs. 75,73,113/- along with interest at the rate of 10.75% 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 amount.
- ii. 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.

36. Complaint stands disposed of.

37. File be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.12.2023