



HARERA
GURUGRAM

Complaint No. 2128 of
2023 and 2130 of 2023

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

Date of filing of complaints : 17.05.2023
Date of first hearing : 26.09.2023
Date of decision : 11.12.2024

Name of Builder	M/s VSR Infratech Private Limited	
Project Name	"114 Avenue" at Sector 114, Bajghera Road, Gurugram	
Case No.	Case title	APPEARANCE
CR/2128/2023	Savita Yadav V/s 1. M/s VSR Infratech Pvt. Ltd. 2. M/s Band M Propmart Pvt. Ltd.	Sh. Geetansh Nagpal (Advocate for complainants)
CR/2130/2023	Neelam Devi V/s 1. M/s VSR Infratech Pvt. Ltd. 2. M/s Band M Propmart Pvt. Ltd.	Ms. Shriya Takkar and Ms. Smriti Srivastava (Advocates for respondent no. 1) Sh. Jagdeep Yadav (Advocate for respondent no. 2)

CORAM:

Ashok Sangwan

Member

ORDER

1. This order shall dispose of both the complaints titled as above filed before the authority 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 the parties.



2. 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:

Complaint No., Case Title, and Date of filing of complaint	Unit No.	Date of allotment letter and execution of builder buyer agreement	Date of execution of Conveyance Deed and tri-partite agreement	Total Consideration / Total Amount paid by the complainants in Rs.
CR No. 2128 of 2023 Savita Yadav Vs. M/s VSR Infratech Pvt. Ltd. and M/s Band M Propmart Pvt. Ltd.	F-57 on First floor 334.11 sq. ft. (Super Area)	30.05.2022 (Copy not annexed)	CD: 06.07.2022 (Page 26 of complaint) Tri-partite agreement entered on: 19.07.2022 (Page 14 of reply)	TSC: - Rs.40,00,299/- (Page 24 of complaint) AP: - Rs.40,00,299/- (Page 32 of complaint)
CR No. 2130 of 2023 Neelam Devi Vs. M/s VSR Infratech Pvt. Ltd. and M/s Band M Propmart Pvt. Ltd.	F-73 on First floor 334.98 sq. ft. (Super Area)	30.05.2022 (Copy not annexed)	CD: 06.07.2022 (Page 26 of complaint) Tri-partite agreement entered on: 19.07.2022 (Page 60 of complaint)	TSC: - Rs.39,99,996/- (Page 61 of complaint) AP: - Rs.39,99,996/- (Page 61 of complaint)

The complainants in the above complaints have sought the following reliefs:

1. Direct the respondent to pay lease rental to the complainant @ Rs. 93.33 per sq. ft. per month from 15.07.2022 till 14.07.2023.
2. Direct the respondent to assure and pay future lease rental as per the 9-year lock-in period in the tri-partite agreement in case the respondents do not pay the



future lease rental, then they may be imposed a further penalty or interest.
3. Direct either respondent no. 2 to pay lease rental to the complainant as per the tripartite agreement or respondent no. 1 to fulfill its obligations against the complainant for not paying the lease rental.

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)

CD: Conveyance Deed

3. The facts of both the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case *CR/2128/2023 case titled as "Savita Yadav V/s M/s VSR Infratech Pvt. Ltd. and M/s Band M Propmart Pvt. Ltd."* are being taken into consideration for deciding the outcome of these cases.

A. Project and unit related details

4. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of execution of builder buyer agreement and conveyance deed, have been detailed in the following tabular form:

CR/2128/2023 case titled as "Savita Yadav V/s M/s VSR Infratech Pvt. Ltd. and M/s Band M Propmart Pvt. Ltd."

Sr. No.	Particulars	Details
1.	Name of the project	"114 Avenue", Sector 114, Gurugram
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.	RERA Registered/ not registered	Registered Vide 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.	Unit no.	F-57 on First floor
6.	Unit area admeasuring	334.11 sq. ft. (Super Area)
7.	Allotment letter and builder buyer agreement	30.05.2022 (Copy of both not annexed)
8.	Conveyance Deed	06.07.2022 (Page 26 of complaint)



9.	Tri-partite agreement	19.07.2022 (Respondent no. 2 undertook the responsibility to lease out the unit purchased by complainant from respondent no. 1) (Page 14 of reply)
10.	Lease rental clause	Clause 1 of tri-partite agreement "1. After the receipt of the Possession charges by the Developer, the first lease rental to be paid by the Aggregator to the Allottee shall be @ Rs.93.33/- (Rupees Ninety Three and Paise Three Three Only) per sq. ft. of super area of premises per month with effect from 15.07.2022 till 14.07.2023 (hereinafter referred to as the "Lease Rental"). 2..... 3.In the event, allottee fails to make payment as per Schedule-1 attached in the AFS, then the Aggregator shall not be liable to pay any Lease Rental post the expiry of due date of payment." (Page 15 of reply)
11.	Total sale consideration	Rs.40,00,299/- (Page 24 of complaint)
12.	Amount paid by the complainant	Rs.40,00,299/- (Page 32 of complaint)

B. Facts of the complaint

5. The complainant has made the following submissions in the complaint: -
- That the complainant vide receipt dated 02.03.2022, booked a unit in the project of the respondents called "114 Avenue" situated at Revenue Estate of Village Bajghera, Sector-114, Gurugram.
 - That the respondents, upon such confirmation of the booking application, allotted the commercial shop bearing no. F-57, first floor, admeasuring 334.11 sq. ft. to the complainant in the said project vide allotment letter dated 30.05.2022.
 - That the builder buyer agreement was executed between the parties on 30.05.2022 for a total consideration of Rs. 40,00,299/- and the complainant paid the entire amount as and when demanded by the respondent.

- d) That during the period, the complainant, for paying such a hefty amount for the said shop, took a loan vide mortgage dated 06.06.2022 from the financial institution and deposited all the documents related to the said property with the bank itself.
- e) That the respondent handed over the possession of the unit to the complainant and got conveyance deed executed in favour of the complainant on 06.07.2022, and the complainant paid a total amount of Rs. 40,00,299/- to the respondent.
- f) Thereafter, the respondents and the complainant entered into a tripartite agreement dated 19.07.2022 in which the respondent no. 1 is the confirming party, and the respondent no. 2 is the aggregator, and the complainant is the allottee. Further, as per clause 1 of the said agreement, the respondent no. 2 shall pay the first lease rent to the complainant @ Rs. 93.33/- per sq. ft. per month commencing from 15.07.2022 till 14.07.2022, which neither of the respondents has paid to the complainant till date.
- g) That neither the respondent no. 2 nor the respondent no. 1, paid the lease rental to the complainant as per the terms and conditions of the tripartite agreement dated 19.07.2022. The respondents did not abide as per the terms and conditions of the tripartite agreement and caused a breach of contract as per Section 73 and 74 of the Indian Contract Act, 1872.
- h) That, the conveyance deed dated 06.07.2022 makes no provision for compensating the complainant for the non-payment of lease rent by the respondents to the complainant. The complainant was not given any opportunity to negotiate the terms of the said conveyance deed.
- i) That the respondents have played a fraud upon the complainant and have cheated them fraudulently and dishonestly with a false promise to pay the



lease rent to the complainant within the stipulated period as per the tripartite agreement. Hence, the complainant being aggrieved by the offending misconduct, fraudulent activities, deficiency and failure in service of the respondent is filing the present complaint.

- j) That the respondent is guilty of deficiency in service within the purview of provisions of the Real Estate (Regulation and Development) Act, 2016 and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017. The complainant has suffered on account of deficiency in service by the respondents and as such the respondents are fully liable to cure the deficiency as per the provisions of the Real Estate (Regulation and Development) Act, 2016 and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017.
- k) That the complainant is entitled to get the lease rental along with interest at the prescribed rate from date of commencement of first lease till the date it gets completed. The project in question is ongoing as defined under Rule 2(o) of the Rules, *ibid.*

C. Relief sought by the complainant: -

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

- I. Direct the respondent to pay lease rental to the complainant @ Rs. 93.33 per sq. ft. per month from 15.07.2022 till 14.07.2023.
- II. Direct the respondent to assure and pay future lease rental as per the 9-year lock-in period in the tri-partite agreement in case respondents do not pay the future lease rental, then impose a further penalty or interest.
- III. Direct either respondent no. 2 to pay lease rental to the complainant as per the tripartite agreement or respondent no. 1 to fulfill its obligations against the complainant for not paying the lease rental.

D. Reply by the respondent



7. The respondent no. 1 has filed an application dated 27.09.2023 praying for dismissal of complaint qua the respondent no. 1 on the ground that respondent no. 1 is merely a conforming party to tri-partite agreement dated 19.07.2022 executed between the complainant and respondent no. 2. Same is evident from recital portion C, clause 8 and clause 14 of the said agreement. Also, clause 15 of the said tri-partite agreement clearly states that the complainant shall keep respondent no. 1 indemnified and harmless against any claims regarding the payment of lease rent arising from the agreement. Clause 14 states that the lease rent shall be paid to the allottee solely by respondent no.2. Further, respondent no. 1 is not a promoter, allottee or a real estate agent as per the definition provided under the RERA Act. The conveyance deed was already executed on 06.07.2022 in favor of the complainant and accordingly, the role and responsibilities of respondent no. 1 as a developer with the complainant terminates or ends and no claim whatsoever remains against the respondent no.1.
8. On the other hand, respondent no. 2 contested the complaint on the following grounds by way of its reply dated 24.04.2024: -
- a) That complainant approached respondent no. 2 to let out his property of commercial unit bearing no F-57 located on the first floor as per provisional floor plans admeasuring a super area of 334.11 sq. ft in the project of 114 Avenue, situated at revenue estate of village Bhajghera, district Gurgaon, sector -114, Haryana. On the request and assurance given by the complainant that soon after taking the property on lease it would be a source of income for the answering respondent, agreed to execute a tripartite agreement with the complainant, the developer company and the answering respondent. Under these circumstances, a tri-partite

agreement dated 19.07.2022 was executed between the complainant, the developer and the answering respondent.

- b) That in May 2022 the complainant approached respondent no. 2. The complainant claimed and represented that the complainant is an allottee of 2 BHK flat bearing number 604 on the tentatively admeasuring area of 1250 Sq. Fit situated in Tower A 15, 6th floor, in the group housing project named "Avalon Rosewood, Sector 16, Alwar Bypass Road Bewadi, Rajasthan" being developed by M/s Avalon (a unit of GRG distributor and developer Private Limited) in contention of the same the complainant has entered into a retail buyer agreement dated 27.08.2014.
- c) That the complainant being allottees' of the said flat, came to the respondent with an offer to sell (barter) the said unit to the respondent, as the respondent was in search of property consequently, the respondent agreed to buy, and the complainant agreed to sell out the said apartment. The complainant further represented to the respondent that the said apartment is free from all sorts of encumbrances injunction, attachment etc. nor did the complainant enter into any kind of agreement to sell, sale deed, lease deed, decree, exchange of ownership etc. nor had executed any document pertaining to the said apartment in favour of any other person. The complaint was further represented by that no stay has been granted by any court of law for the said apartment, nor any notice of acquisition or otherwise has been received by the complainant nor the said apartment has been acquired by the government hence the said apartment is free from all sorts of encumbrances, attachment, loan, lien, mortgage etc.
- d) That in pursuance of the complainant's offer the respondent had accepted the complainant's offer and the complainant being allottee of the said flat and both parties agreed to a sale consideration of Rs 16,75,000/- the

entire sale consideration of Rs 16,75,000/- was paid to the complainant through cheques and RTGS dated on 21.05.2022. That, all the expenses wise stamp duty and registration charges for the restriction of the sale deed were agreed to be borne by the respondent. The complainant agreed to execute and register the sale deed in favour of the respondent upon the offer of possession by the said developer. The complainant further agreed to execute all the necessary documents to execute and register the conveyance deed/ sale deed and to get updated the record to the builder.

- e) That prior to execution of the opposite tripartite agreement complainant agreed to sell/ barter her apartment. The said apartment was allotted in the name of Mr. Raj Singh Yadav & Mr. Mukesh Kumar. As per the assurance given by the complainant, the answering respondent agreed to purchase the aforesaid apartment on payment of Rs. 16,75,000/- along with the remaining payment agreed to be paid by the answering respondent to the Avalon Group.
- f) That it was agreed between the complainant's husband and respondent no. 2 that they will execute all the necessary documents, agreement to sell, possession letter, receipts etc with respect to the aforesaid apartment in favour of the respondent. However, after receipt of the amount referred to above complainant and her husband started delaying the matter on one pretext on the other. The answering respondent has made a huge amount to the complainant. Therefore, he repeatedly requests the complainant and her husband to execute all the necessary documents in favour of the answering respondent so that at the relevant time the conveyance deed could be executed in favour of the respondent.
- g) That however instead of executing any document with respect to the apartment situated in Avalon Rosewood Alwar Bypass Road, Bhiwani,

Rajasthan the tripartite agreement dated 19.07.2022 was executed by the complainant in favour of the respondent no.2 and the developer.

- h) That although as per the terms of the tripartite agreement, the lease amount was fixed at the rate of rupees 93.33/- per square feet per month. However it was orally and amicably settled and decided between the complainant, her husband and the answering respondent that till such time the complainant and her husband would not execute all the necessary documents with respect to the apartment situated in Avalon Rosewood Alwar bypass road, Bhiwani, Rajasthan agreed to be purchased by the answering respondent no payment to be paid in respect of the aforesaid leased tripartite agreement.
- i) That instead of executing the documents pertaining to apartment 2Bhk flat, bearing no 604, 6th-floor tower A-15 situated in Avalon Rosewood Alwar bypass road, Bhiwani, Rajasthan the present false and frivolous complainant has been filed by the complainant levelling false and baseless allegations therein. As highlighted above terms & conditions of the tripartite agreement with respect to the payment to the lease amount are not applicable till such time the complainant and her husband will not execute the necessary documents in respect of the apartment 2Bhk flat, bearing no 604, 6th-floor tower A-15 in Avalon rosewood Alwar bypass road, Bhiwani, Rajasthan in favour of the answering respondent. The present complaint is not maintainable and thus liable to be dismissed.
- j) That the complainant has approached the answering respondent to let his property situated in F-73 located on the First Floor, commercial unit, 114 Avenue, Sector 114, Bajhghera, Gurugram, Haryana.
- k) That although the answering respondent is not the developer against whom the complainant could claim any right before this Hon'ble Court.

Even then as per the tripartite agreement on the basis of which the present false and frivolous has been filed by the complainant. The jurisdiction of this Hon'ble authority is barred. As per clause 17 of the tripartite agreement, only the sole arbitrator can decide the dispute if any arises due to any violation of the aforesaid agreement.

- l) That the present complaint is also not maintainable since the complainant herein is seeking relief in the nature of the specific performance of the contract for which this Hon'ble authority does not have jurisdiction. Clause -17 of the tripartite agreement specifically provided for the Arbitration Clause. Section 14 of the Specific Relief Act clearly provides for the nature of a contract which cannot be specifically enforced and includes a contract which is in its nature 'determinable'. It is submitted that the relief of setting aside of cancellation and restoration of the agreement even on the finding that the breach was committed by the complainant is contrary to mandate is Section 14 of Specific Relief Act.
- m) That the complainant has committed fraud with Mr. Devendra Pandey the duly authorized signatory of respondent no.2 through whom the present reply is being submitted by Mr. Devendra Pandey. Mr Devendra Pandey had already paid a sum of Rs-16,75,000/- to the husband of the complainant and the aforesaid amount is being used by the complainant and his family members and they are taking advantage of the same. In this manner, no amount whatsoever is payable by the answering respondent. By way of the present complaint want to put pressure upon respondent no. 2 to somehow extort money from it.
- n) That a huge amount has already been paid by Mr Devendra Pandey for the purchase of the said unit. No documents have been executed by the complainant in favour of Mr Devendra Pandey. Now the aforesaid project

is stuck within the litigation before NCLT and Mr Devinder Pandey already got registered complaint before the Delhi Police dated 15.03.2024.

- o) That the parties are bound by the terms and conditions mentioned in the tripartite agreement. it is pertinent to mention here that the jurisdiction of this Hon'ble authority is barred.
- p) That the clauses of the tripartite agreement which is binding between the complainant and respondent no. 2, both have agreed upon their respective obligations and consequences in case of breach of any of the conditions specified therein. In view of the above, the captioned complaint is not maintainable in law and is liable to be dismissed in Lamine. It is a well-settled proposition of law that the Courts cannot travel beyond what is provided in the agreement/contract and generate altogether a new contract; the responsibility of the Court is to interpret the existing contract appropriately and decide the rights and liabilities of the parties within the four corners of the contract.

E. Maintainability of the complaint

9. The present matter pertains to a tri-partite agreement dated 19.07.2022 executed between the parties to lease out the unit of the complainant after the property in question has been conveyed to the allottee through a conveyance deed dated 06.07.2022.
10. So far as respondent no. 1 is concerned, the Authority is of the view that the obligations and responsibilities of respondent no. 1 as a developer come to an end after the execution of a conveyance deed in favor of the complainant in terms of Section 11 (4)(a) of the Act of 2016, except the statutory obligations under the Act, 2016.
11. Herein, the conveyance deed was already executed by respondent no.1 in favor of the complainant on 06.07.2022 and accordingly, the financial obligations of respondent no. 1 as a promoter and the complainant came

to an end, except the statutory obligations under the Act, 2016 and no claim remain against the respondent no.1. Further, there is no obligation in the said conveyance deed dated 06.07.2022 to lease out the premises of the complainant or to carry out the purposes of tri-partite agreement.

12. So far as respondent no. 2 is concerned, it is relevant to see the provisions of Section 31 of the RERA Act, 2016 which provides as under:

Section 31: Filing of complaints with the Authority...

"31. (1) Any aggrieved person may file a 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 the rules and regulations made thereunder against any promoter, allottee or real estate agent, as the case may be.

Explanation.—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force....."

The respondent no. 2 is neither a promoter nor a real estate agent or an allottee. Therefore, respondent no. 2 does not come within the purview of Section 31 of the RERA Act of 2016.

13. In view of the above, the Authority is of the view that the enforcement of tri-partite agreement does not lie within the jurisdiction of this Authority.

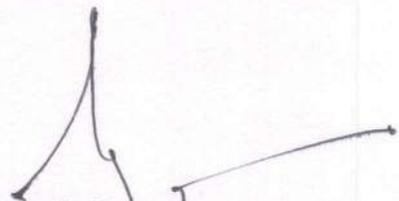
Therefore, the complaint is **dismissed** being not maintainable.

14. This decision shall mutatis mutandis apply to cases mentioned in para 2 of this order.

15. Complaint stands disposed of.

16. File be consigned to the registry.

Dated: 11.12.2024


Ashok Sangwan
Member
Haryana Real Estate
Regulatory Authority,
Gurugram