

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM****Date of decision:** 11.03.2025

NAME OF THE BUILDER		VSR INFRATECH PVT. LTD.	
PROJECT NAME		114 AVENUE	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/610/2023	Shaji K N and Som Nath Munjal V/s VSR Projects Pvt. Ltd.	Ms. Shivani Dang Ms. Shriya Takkar
2.	CR/611/2023	Shaji K N and Som Nath Munjal V/s VSR Projects Pvt. Ltd.	Ms. Shivani Dang Ms. Shriya Takkar

CORAM:

Shri. Arun Kumar	Chairperson
Shri. Vijay Kumar Goyal	Member
Shri. Ashok Sangwan	Member

ORDER

1. This order shall dispose of both the 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.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the projects,



namely, '114 Avenue' being developed by the same respondent promoters i.e., M/s VSR Projects Pvt. Ltd.

3. The details of the complaints, reply to status, unit no., date of agreement, & allotment, due date of possession, offer of possession and relief sought are given in the table below:

Project name and Location	"114 Avenue", Sector 114, Gurugram, Haryana.	
32. Possession The company shall give possession of the said unit within 36 months of signing of this agreement or within 36 months from the date of start of construction of the said building whichever is later... [Page 82 of reply]		
Due date of possession	24.09.2016	
Occupation certificate	17.02.2021 [pg. 107 of reply]	
Comp no.	CR/610/2023	CR/611/2023
Unit no.	G-12 A, Ground Floor, G block [Page 28 of complaint]	G-37, Ground Floor, G block [Page 68 of reply]
Allotment letter	30.07.2012 [Page 69 of reply]	30.07.2012 [Page 68 of reply]
Date of execution of buyer's agreement	24.09.2013 [Page 77 of reply]	24.09.2013 [Page 72 of reply]
Total sale consideration	₹ 56,78,315/- [as per allotment letter at page 55 of complaint]	₹ 76,73,836/- [as per BBA at page 73 of complaint]
Total amount paid	₹ 42,47,518/- [As per termination letter dated 20.09.2022, page 116 of reply]	₹ 50,24,853.11/- [As per SOA attached with offer of possession letter dated 23.03.2021, page 107 of reply]
Offer of possession	23.03.2021 [pg. 110 of reply]	23.03.2021 [pg. 106 of reply]



Email complainant by for adjusting DPC in the final demand	07.05.2022 [annexure C4 of written submissions on behalf of complainant dated 19.12.2024]	07.05.2022 [annexure C4 of written submissions on behalf of complainant dated 19.12.2024]
Intimation of termination	20.09.2022 [pg. 116 of reply]	03.02.2022 [pg. 109 of reply]
Termination notice	20.09.2022 [pg. 116 of reply]	20.09.2022 [pg. 112 of reply]
Third party rights created in favour of M/s Shreshtham Services LLP vide allotment letter	01.03.2023 [pg. 55 of reply]	01.03.2023 [pg. 110 of reply to amended complaint dated 06.08.2024]
Conveyance deed executed in favour of M/s Shreshtham Services LLP	05.09.2023 [additional document filed by the respondent during proceedings dated 21.09.2023]	06.09.2023 [pg. 116 of reply to amended complaint dated 06.08.2024]
<p>1. Direct the respondent to refund ₹83,69,260/- i.e., the amount agreed to be paid by the respondent to the complainants at the time of entering the settlement on 29.12.2022 which includes ₹42,47,518/- i.e., the amount paid by the complainant to the respondent towards the sale consideration of the said unit and the amount of premium agreed to be paid by the respondent to the complainants i.e., ₹42,47,518/- along with interest @18% per annum w.e.f. 29.12.2022 i.e., from the date of settlement till realization of the said amount in favour of the complainants.</p>		

4. 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 allottees and the real estate agents under the Act, the rules and the regulations made thereunder.
5. The facts of all the complaints filed by the complainants/ allottees are also similar. Out of the above-mentioned cases, the particulars of lead

case **CR/610/2023 titled as Shaji K N and Som Nath Munjal V/s VSR Projects Pvt. Ltd.** are being taken into consideration for determining the rights of the allottees qua refund, and other reliefs sought by the complainants.

A. Unit and project related details

6. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, date of buyer's agreement etc, have been detailed in the following tabular form:

CR/610/2023 titled as Shaji K N and Som Nath Munjal V/s VSR Projects Pvt. Ltd.

S. N.	Particulars	Details
1.	Name of the project	"114 Avenue," Sector 114, Gurugram, Haryana
2.	Nature of the project	Commercial Colony
3.	RERA Registered/ not registered	Registered vide no. 53 of 2017 dated 30.09.2019 Valid till 31.12.2019 Extension of registration - Vide no. 13 of 2020 dated 05.10.2020 Extension valid till- 31.12.2020
4.	License no. and validity	72 of 2011 dated 21.07.2011 Valid up to 20.07.2024
5.	Unit no.	G-12 A, Ground Floor, G block [Page 28 of complaint]
6.	Unit area admeasuring	794.17 sq. ft.
7.	Date of booking	14.07.2011



8.	Date of allotment	30.07.2012 [Page 69 of reply]
9.	Date of buyer's agreement	24.09.2013 [Page 77 of reply]
10.	Date of start of construction	Not provided
11.	Possession clause	32. Possession <i>The company shall give possession of the said unit within 36 months of signing of this agreement or within 36 months from the date of start of construction of the said building whichever is later...</i> [Page 82 of reply]
12.	Due date of possession	24.09.2016 [Note: As the date of start of construction is not on record, the due date is calculated from the date of execution of the agreement]
13.	Total sale consideration as per allotment letter at page 55 of complaint	Rs. 56,78,315/-
14.	Amount paid by the complainant	Rs. 42,47,518/- [As per termination letter dated 20.09.2022, page 116 of reply]
15.	Occupation certificate /Completion certificate	17.02.2021 [Page 107 of reply]
16.	Offer of possession	23.03.2021 [Page 110 of reply]
17.	Intimation for termination	03.02.2022 [Page 113 of reply]
18.	Termination notice	20.09.2022



		[Page 116 of reply]
19.	Third party rights created in favour of M/s Shreshtham Services LLP vide allotment letter dated	01.03.2023 [Page 55 of reply]
20.	Conveyance deed executed in favour of M/s Shreshtham Services LLP	05.09.2023 [Additional document filed by the respondent during proceedings dated 21.09.2023]

B. Facts of the complaint

7. The complainants have submitted as under:

- a. That the complainants are law abiding and peace-loving persons who had availed the services of the respondent company with the vision of having their own property in Gurugram. The complainants herein have been cheated by the malpractices and unfair trade practices adopted by the respondent company. The complainants are 'Allottees' within the meaning of Section 2(d) of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as the Act). That the respondent who is "Promoter" as per Section 2(zk) of the Act, approached the complainants through its Authorized Representatives to dupe them of their hard-earned money by making several false promises.
- b. That the respondent, M/s VSR Infratech Pvt. Ltd. (hereinafter referred to as the respondent), is a company incorporated under the provisions of the Companies Act 1956, having its Corporate Office at Plot no. 14, Ground Floor, Sector 44, Institutional Area, Gurugram, Haryana 122003 and registered office at A-22 Hill View Apartments, Vasant Vihar, New Delhi 110057, and is engaged, among other



things, in the construction, development, marketing and false of various types of real estate projects. That the complainants upon the representations made by the respondent that its real estate project namely, '114 Avenue' is one of a kind real estate project being developed with impeccable facilities, invested their hard-earned money and booked a unit in the said commercial project of the respondent situated at Sector 114, Gurugram.

- c. That induced by the attractive advertisements, assurances, representations, and promises made by the Respondent and believing the same to be correct and true, the Complainants applied for the allotment of a Unit in the said Project of the Respondent. Vide Allotment letter dated 30.07.2012, the Respondent acknowledged the booking request made by the Complainants and allotted Unit no. 12-A, Ground Floor admeasuring 794.17 sq. ft. to the Complainants for a total sale consideration of Rs. 70,48,260/- (Rupees Seventy Lakh Forty-Eight Thousand Two Hundred Sixty Only) including all the charges. At the time of booking, the Respondent assured the Complainants of timely delivery of the Unit.
- d. Based on the Respondent's representations and assurances that the Respondent would honour its commitments, the Complainants have already paid a sum of Rs. 42,47,518/- (Rupees Forty-Two Lakh Forty-Seven Thousand Five Hundred Eighteen Rupees Only) to the Respondent against the total sale consideration including EDC and IDC and entered into a Builder-Buyer Agreement dated 24.09.2013 (hereinafter referred to as the BBA) with the Respondent. The payment of the aforesaid sum has also been acknowledged by the



Respondent in the ledger maintained by the Respondent. It is pertinent to mention here that the said agreement contained various one sided and arbitrary clauses, but yet the Complainants could not negotiate on any of the clauses, since any disagreement or cancellation would have led to forfeiture of the earnest money. As a result, the Complainants herein was only required to sign on the dotted line.

- e. That as per Clause 38 of the Agreement, the estimated and contemplated due date of offer of possession was 36 months from signing of Builder-Buyer Agreement (24.09.2013) 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. Accordingly, the proposed and estimated date comes out to be 24.09.2016 as per clause 38 of the Agreement. 8. That the complainants kept on making all the payments to the respondent as and when raised by the respondent. The complainants paid a sum of Rs. 42,47,518/- i.e. 60% of the total sale consideration to the respondent up to 2014. However, in 2020, when the complainants went to the project site to check progress of the project, to their utter shock and dismay, the complainants found that the project was far from completion. Even after receiving more than 60% of the total sale consideration, the respondent failed to deliver the possession even till 2020.
- f. That to the Complainants' shock, the Respondent kept quiet for 7 long years and sent no demand notices to the Complainants for the payment of their instalment as well as for providing the update for the construction of the project. Since the project had been delayed



inordinately, the Complainants requested the Respondent to adjust the remaining sale consideration with the delay possession charges and handover the possession of the Unit but the Respondent being in dominant position misused its position and illegally terminated the allotment of the Complainants and further informed the Complainants that the Respondent company is entitled to deduct the earnest money.

- g. That in an absolutely illegal manner, by virtue of the said termination letter dated 20.09.2022, the respondent deducted 60% of the earnest money out of the total money given by the complainants to the respondent. The same is absolutely arbitrary, illegal and contrary to the provisions of the RERA Act, 2016. The Complainants sent an e-mail to the Respondent company requesting them to withdraw the termination letter as well adjusting the outstanding amount due by the Complainants with the delay possession charges payable by the Respondent company for the delay of 7 years in the completion of the project. The Complainants further requested that they are genuine buyers and wish to continue with the project, to which the Respondent paid no heed.
- h. That the complainants raised their voice against the illegal termination by the respondent. After repeated requests of the complainants in December 2022, since the respondent was very well aware that the allotment had been terminated in an absolutely illegal manner, the respondent agreed to buy back the unit of the complainants by paying a sum of Rs. 83,69,260/- (Rs. 42,47,518/- was the amount received by the respondent from the complainants



and a premium of Rs. 5,190/- per sq. ft. i.e. Rs. 41,21,742/- since the value of the unit in question was much higher than the rate at which it was booked by the complainants). The negotiations regarding settlement were carried out between Renu Mehta (on behalf of the complainants) and Virender Saini (on behalf of the respondent who approached the complainants and the representative of the complainants, Renu Mehta and stated that he had been authorized on behalf of the respondent to settle the dispute between the parties and sign the requisite document(s), if any).

- i. That the fact of the matter is that in a meeting held between Ms. Renu Mehta, complainant no. 2 and Virender Saini, it was stated by the said Virender Saini on behalf of the respondent that the respondent was interested in buying back the unit of the complainants; that he was carrying a cheque towards the initial token amount i.e. Rs. 1,00,000/- and also that a detailed agreement could be signed later on. Complainant no. 2 on behalf of the complainants acceded to the said request of the respondent and the terms of settlement agreed between the complainants and the respondent were reduced into writing in short on a paper. Accordingly, a document mentioning briefly the terms for buy back of the unit in question was signed by complainant no. 2 on behalf of both the complainants and the said Virender Saini on behalf of the respondent. As per the agreed terms, Virender Saini also handed over cheque bearing no. 002040 dated 24.12.2022 drawn on HDFC Bank for a sum of Rs. 1,00,000/- to the complainants as token amount towards purchase of the said unit. It was further agreed that the respondent shall pay 10% of the agreed



sale consideration for buy back inclusive of the token amount i.e. Rs.8,36,926/- on or before 6th January, 2023 and remaining 90% on or before 10th April, 2023 failing which the money paid by the respondent would stand forfeited and the settlement would stand cancelled. Moreover, the allotment of the unit cancelled by the respondent was to stand revived in favour of the complainants and the complainants would not be liable to pay the outstanding dues.

- j. That initially, a settlement agreement was shared by Virender Saini recording the terms and conditions agreed between the complainants and the respondent but later the intentions of the respondent turned absolutely mala fide and instead of signing the Settlement Agreement, the respondent shared an agreement to sell in favour of some third party namely, Millennium Skill Assessors Private Limited. The complainants refused to sign the said Agreement to Sell with the said third party.
- k. That the respondent did not honour its commitments and only a meagre sum of Rs. 1,00,000/- was paid by the respondent to the complainants. The complainants kept requesting the respondent to sign the agreement as well as to pay the balance amount but the respondent miserably failed to do so. Since the respondent failed to abide by the terms of the said respondent of the said settlement, the complainants were left with no other option but to file complaint seeking possession, delayed possession charges etc. before this Hon'ble Authority. The reply to the said complaint was filed by the respondent in which a false stand was taken by the respondent that it had executed conveyance deed in favour of one M/s Shrestham



Services LLP during the pendency of the present complaint. Since the respondent has already dishonestly and illegally executed conveyance deed in favour of a third party, the respondent is now constrained to seek the relief of refund of the amount promised by the respondent at the time of entering into settlement in December, 2022.

- l. That as per Annexure C-6 executed between the parties, the respondent is liable to pay to the complainants a sum of Rs.83,69,260/- in respect of the unit. The respondent is absolutely bound by the said terms and conditions agreed upon between the parties on 29.12.2022 and since the unit in question has been sold to a third party in a totally illegal manner by the respondent, the respondent is liable to refund the agreed amount in respect the unit of the complainants.
- m. That the complainants have been duped of their hard-earned money by the respondent and it has now transpired that this is the modus operandi of the respondent to dupe innocent allottees like the complainants by taking away their hard-earned money. The respondent has throughout kept the complainants in dark and have fraudulently allotted the unit of the complainants to a third party when the complainants filed the present complaint and also executed conveyance deed. The complainants have been illegally deprived of their property previously allotted to them and the complainants also reserve their right to take other appropriate legal action against the respondent. The complainants are now left with no other option but to approach this Hon'ble Authority for the



refund of the amount promised to be paid by the respondent in case the complainants do not get the unit in question.

- n. That the respondent has been highly deficient in rendering its services and has cheated the innocent complainants by first making false promises of delivering possession of their unit in time; by illegally cancelling their unit; by inducing the complainants to enter into the settlement and then not honoring the said settlement as well. This clearly shows the ulterior motive of the respondent to extract money from the innocent buyers fraudulently and also demonstrates that the respondent has misused the provisions of the RERA Act, 2016. That as per the provisions of the RERA Act, 2016 the complainants are seeking refund of the amount promised to be paid by the respondent as the respondent at the time of entering into settlement on 29.12.2022. The said amount had been agreed to by the respondent itself and the respondent cannot be allowed to backtrack from paying the said agreed amount of Rs. 83,69,260/- to be paid by it in respect of the unit in question. The complainants being aggrieved persons are filing the present complaint under Section 31 of the RERA Act, 2016.
- o. That the present Complaint has been made with bona fide intention and the same is not pending having similar relief before any other court of law or any other authority or tribunal. That the Hon'ble Authority has jurisdiction to entertain the present Complaint since the project is situated in Gurugram which is well within the jurisdiction of this Hon'ble Authority. That there is no undue delay on part of the Complainants in filing the present Complaint before

this Hon'ble Authority. The balance of convenience is entirely in the favor of the Complainants and against the offending Respondent.

C. Relief sought by the complainants:

8. The complainants have sought following relief(s):
 - a. Direct the respondent to refund ₹83,69,260/- i.e., the amount agreed to be paid by the respondent to the complainants at the time of entering the settlement on 29.12.2022 which includes ₹42,47,518/- i.e., the amount paid by the complainant to the respondent towards the sale consideration of the said unit and the amount of premium agreed to be paid by the respondent to the complainants i.e., ₹42,47,518/- along with interest @18% per annum w.e.f. 29.12.2022 i.e., from the date of settlement till realization of the said amount in favour of the complainants.
9. On the date of hearing, the authority explained to the respondent /promoters 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

10. The respondent has contested the complaint on the following grounds:
 - a. That it is pertinent to mention here that the Respondent Company is new company with a mission and vision to become the number 1 company and endeavour to give its customers quality construction and possession in time. That it is further submitted that the Complainants are attempting to raise issues now, at a belated stage, attempting to seek a modification of the Space Buyer's Agreement executed between the parties in order to acquire benefits for which



the Complainants are entitled in the least. That the Complainants had wilfully agreed to the terms and conditions of the Space Buyer's Agreement and are now at a belated stage attempting to wriggle out of their obligations by filing the instant complaint before this Hon'ble Authority.

- b. That it is reiterated that the issue so raised in this complaint are not only baseless but also demonstrates an attempt to arm twist the Answering Respondent into succumbing to the pressure so created by the Complainants in filing this complaint before this Forum and seeking the reliefs which the Complainant is not entitled to. That the Complainants were duly informed about the Schedule of Possession as per Clauses 32 of the Space Buyers Agreement entered into between the Complainants and Respondent. That from the perusal of the above, it is clear that as per the Clause 32 the Company was to handover the possession of the unit within 36 months (3 years) from the date of signing of the agreement unless there was delay due to a force majeure condition or due to other reasons mentioned in Clause 32. The reasons for delay in handing over the possession have been explained in the preceding paragraphs and the same are reiterated herein. It is worth mentioning here that there all the reasons as mentioned were covered under clause 32 of the agreement and thus the Respondent cannot be accounted for any delay as per the terms of the agreement.
- c. That the Complainants applied for allotment of a retail unit in the project of the Respondent Company being developed in the name and style of "114 Avenue". That for the purpose of booking the



Complainants submitted an application form for allotment of retail unit no. G-12A. That pursuant to the Application Form, the Respondent Company allotted commercial unit G-12A having tentative super area 794.170 sq.ft. to the Complainants vide allotment letter dated 30.07.2012. That the Space Buyer's Agreement was executed between the parties on 24.09.2013. The cost of the unit in question as per the Space Buyer's Agreement was Rs. 55,59,190/- plus EDC/IDC to the tune of Rs. 3,73,260/- along with Preferred Location Charges of Rs. 6,67,103/- amounting to a total of Rs. 65,99,553/- plus IFMS, taxes and other charges. It is submitted that the Space Buyer's Agreement covers all rights and liabilities of both the parties. It is submitted that the Complainant opted for Development/Construction Linked Payment Plan. It is submitted that all the demands were raised as per the payment plan opted by the Complainant.

- d. That as per Clause 32 of the Space Buyers Agreement dated 24.09.2013, the Respondent was supposed to hand over the possession within a period of 36 months of signing of this Agreement i.e. 24.09.2013 or within 36 months from the date of start of construction of the said building i.e. in the year 2012 whichever is later and the possession date comes out to be 24.09.2016. However, the said timeline was subject to force majeure conditions. That it is submitted that as per Clause 32 of the Space 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.

- e. That after making sincere efforts despite the force majeure conditions, the Applicant/Respondent completed the construction and thereafter applied for the Occupancy Certificate (OC) on 15.07.2020. That the OC has been received by the Respondent Company on 17.02.2021. That immediately after the receipt of the OC on 17.02.2021, the Respondent Company vide letter dated 23.03.2021 requested the Complainants to come forward and clear her dues and take possession. It is submitted that the Complainants till date have made payment of Rs. 42,47,518/- and an amount of Rs. 53,15,725/- was pending at the time of offer of possession. It is submitted that despite repeated requests, the Complainants failed to come forward and clear their dues and take possession of the said unit. That since the Complainants did not comply with their obligation to clear the dues and take possession of the unit, the Respondent Company was constrained to issue an intimation of termination dated 03.02.2022. That upon issuance of the said intimation to termination letter dated 03.02.2022 the Complainants approached the Respondent Company and requested the Respondent to withdraw the said intimation letter and assured the Respondent that they shall make the payment and take the possession of the said unit. That as a goodwill gesture, the Respondent Company acceded to the request of the Complainants and the intimation of termination dated 03.02.2022 was withdrawn by the Respondent Company. It is pertinent to mention herein that



despite the same the Complainants still did not come forward to clear their dues and take possession of the unit due to which the Respondent Company was constrained to issue a termination letter dated 20.09.2022. It is submitted that the Complainants are in default of their obligation under Sec 19(10) of the RERA Act.

- f. It is in the humble submission of the answering Respondent that the cancellation letter dated 20.09.2022 was issued as per the Space Buyer's Agreement and owing to the default of the Complainants in coming forward to clear their dues and take possession. It is submitted that as per Clause 18 of the Space Buyer's Agreement, the Respondent Company has the right to cancel the allotment in case of default of the Complainants.
- g. That the Respondent was constrained to cancel the unit on account of non-payment of the demand as raised by the Respondent. It is submitted that the Respondent has incurred various losses/damages on account of the breach of the terms of the Space Buyer's Agreement by the Complainants, which the Complainants are liable to pay as per the terms of the Space Buyer's Agreement. Further in accordance with the provisions of the Space Buyer's Agreement, the earnest money amount along with brokerage, HVAT and interest on outstanding payments and other applicable charges (if any) are liable to be forfeited. Thus, the total loss calculated comes to Rs.24,92,310/- (approx.) which includes earnest money deduction @10% to the tune of Rs. 6,57,489/-, taxes to the tune of Rs. 1,45,344/-, further sum of Rs. 12,46,757/- was the interest payable by the Complainants for the delayed payments and an amount of Rs.



4,42,720/- on behalf of the Complainant to the broker through whom the Complainants had made a booking of the unit. It is submitted that post forfeiture of the aforementioned amounts, the Respondent Company is only liable to refund an amount of Rs. 17,55,208/- to the Complainants. That a copy of the cheque for an amount of Rs. 17,55,208/- was attached by the Respondent Company along with the termination letter dated 20.09.2022 and the Complainants were requested to collect the said cheque from the office of the Respondent Company but the Complainants failed to do so. It is pertinent to mention herein that post issuance of the termination letter, settlement talks were initiated between the Complainants and the Respondent Company. It is submitted that as a part of the settlement talks, the Respondent Company paid an amount of Rs. 1,00,000/- to the Complainants being the first instalment of the amount that is liable to be refunded to the Complainants post cancellation. It is submitted that the aforesaid fact has been concealed by the Complainants in the complaint filed before this Hon'ble Authority. However, it is important to mention herein that the settlement talks did not materialize between the parties and therefore the Complainants were requested to collect the cheque of the remaining amount from the office of the Respondent and were also requested to submit the original documents to the Respondent, but the Complainants did not come forward to collect the same.

- h. That in furtherance of the cancellation of the subject unit, the Respondent Company has allotted the unit to one Shreshtham



Services LLP vide allotment letter dated 01.03.2023. That the unit being cancelled there is no privity of contract between the parties and the Complainants have no right, title or interest in the unit in question and neither are allottees of the same and therefore the Complaint is infructuous. It is submitted that since the allotment of the Complainants has been cancelled because of their default, the Complainants have no right whatsoever over the said unit. Thus, the Complainants are not entitled to get any relief as sought for from this Hon'ble Authority. Failure on the part of the Complainants to perform their contractual obligations disentitles them from any relief. That the Respondent has fulfilled its contractual obligations under the Application Form as well as the Allotment Letter however despite that the Complainants have failed to clear the outstanding dues. The Complainants are in default of their contractual obligations and are raising these frivolous issues in order to escape the liability cast upon them by the virtue of the Allotment and unjustly enrich themselves. Therefore, the Complainants are not entitled to any relief whatsoever.

- i. That it is submitted that as per Clause 32 of the Space 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.
- j. In the present case, the complaint pertains to the alleged delay in delivery possession of the unit along with delayed interest for the alleged delay in delivery of possession and Compensation. That the



Complaint has been filed in total disregards to the terms of Space Buyers Agreement executed between parties. That the Respondent has been acting and performing its obligations as per the Agreement and all demands raised by the respondent are as per the Agreement that was wilfully signed by the Complainants. Thus, the complaint is misconceived and not maintainable.

- k. It is submitted that all the demands raised by the Respondent is as per the Schedule of payment opted by the Complainants. Hence, being totally aware about the payment as per the payment plan, they failed to make timely payments and therefore are a chronic defaulter and is liable to pay interest to the Respondent for the delay in payment under Section 19 (6) RERA which states that the Complainants are responsible to make necessary payments in the manner and within time as specified in the agreement and in case of default the complainant is liable to pay interest for delay under Section 19(7) of RERA. It is submitted that various reminder letters dated 31.05.2017, 06.07.2017, 02.08.2017, 22.08.2017, 12.09.2017 and 16.11.2017 were issued by the Respondent Company on several occasions, requesting the Complainants to come forward and clear their dues.
- l. The Complainants have chosen to approach this Hon'ble Authority with a frivolous Complaint only with a malafide intention to unjustly enrich themselves and in one way or the other cover-up their own breaches and non-performance of their contractual obligations. Hence, the Complainants are not entitled to any relief whatsoever from this Hon'ble Authority. It is the well settled law as held by the



Hon'ble Supreme Court of India, a defaulter is not entitled to get any equitable relief. Thus, the complaint must fail.

- m. That without prejudice to rights and contentions and without admission of facts, it is humbly submitted that Section 19 of the Act clearly puts an obligation upon the Complainants to make the payments and it has been clearly prescribed even in the Model Agreements as prescribed under the HARERA. That as per the clause under the said MODEL Agreement, the Allottee is considered to be in default in case the payments are not made as per the agreement. That wherein in addition to the Penalty liability in case of Default, the Promoter has also been given an option to cancel the allotment in case of default and in such a case, the Allottee is only entitled to the refund of the amount after deducting the Booking amount and interest liabilities.
- n. It is pertinent to mention herein that post issuance of the termination letter, settlement talks were initiated between the Complainants and the Respondent Company. It is submitted that as a part of the settlement talks, the Respondent Company paid an amount of Rs, 1,00,000/- to the Complainants being the first instalment of the amount that is liable to be refunded to the Complainants post cancellation. It is submitted that the aforesaid fact has been concealed by the Complainants in the complaint filed before this Hon'ble Authority.
- o. In view of aforementioned facts, it is submitted that the captioned Complaint is frivolous, vague and vexatious in nature. The captioned Complaint has been made to injure and damage the interest and



reputation of the Respondent and the Complex and therefore, the instant Complaint is liable to be dismissed in limine.

11. 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 those undisputed documents and submissions made by the parties.
12. Written submissions filed by the parties are also taken on record and considered by the authority while adjudicating upon the relief sought by the complainant.

E. Jurisdiction of the authority

13. 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

14. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

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

"Section 11(4) (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) 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."

16. 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. Findings on the relief sought by the complainant.

- F.I.** Direct the respondent to refund ₹83,69,260/- i.e., the amount agreed to be paid by the respondent to the complainants at the time of entering the settlement on 29.12.2022 which includes ₹42,47,518/- i.e., the amount paid by the complainant to the respondent towards the sale consideration of the said unit and the amount of premium agreed to be paid by the respondent to the complainants i.e., ₹42,47,518/- along with interest @18% per annum w.e.f. 29.12.2022 i.e., from the date of settlement till realization of the said amount in favour of the complainants.
17. The complainant booked a unit in the said project of the respondent known as "114 Avenue" situated at sector 114, District- Gurgaon, Haryana and was allotted a unit bearing no. G-12A on ground floor in Block G of the project vide booking application dated 14.07.2011. The respondent company issued an allotment letter dated 30.07.2012 and thereafter, a flat buyer agreement was executed inter-se parties on 24.09.2013 for a sale consideration of ₹56,78,315/- out of which the complainant had paid an amount of ₹42,47,518/-. As per the possession



clause 32 of the BBA, the possession of the unit was to be offered within 36 months from the date of signing of the agreement or 36 months from the date of start of construction of the said building whichever is later. The due date of possession is calculated from the date of agreement i.e., 24.09.2013 as the date of start of construction is not known. The period of 36 months ends on 24.09.2016. Accordingly, the due date of possession comes out to be 24.09.2016.

18. The respondent obtained the occupation certificate from the competent authority on 17.02.2021 and offered the said unit to the complainants vide letter dated 23.03.2021 along with a statement of account. The respondent thereafter on 03.02.2022 issued an intimation for termination of the unit and finally cancelled the unit of the complainant vide letter dated 20.09.2022. The complainant in its pleadings has stated that the complainant vide mail dated 07.05.2022, i.e., prior to the cancellation letter, requested the respondent to issue fresh statement of account after adjusting the DPC since the project is delayed by 6 years.
19. The complainants in the said complaint have sought the possession of the unit and the delay possession charges. The complainants apprehending that the respondent may create third party rights in the said unit, filed an application under section 36 of the Act ibid in this Authority requesting for early cognizance of the authority in this matter. The said application was allowed and both the parties were directed to appear before the authority on 27.04.2023. On 27.04.2023 the respondent company stated at bar that the 3rd party rights have already been created in favour of M/s Shrestham Services LLP vide allotment letter dated 01.03.2023. The complainant thereafter on 29.08.2023 filed another application under



section 36 requesting the authority to restrain the respondent from executing the conveyance deed in favour of 3rd party. The same was listed for hearing on 21.09.2023. The respondent company on 21.09.2023 filed the conveyance deed dated 05.09.2023 executed in favour of 3rd party.

20. The complainant also states that the respondent came forward for a settlement for buy back after the termination of the subject unit which could not be resulted but the respondent company acted upon the same by crediting an amount of ₹1,00,000/- as an advance for buy back in the complainant's ledger on 24.12.2022.
21. After due consideration of the documents on record and the facts of the case, the Authority observes that the respondent company not only created third-party rights during the pendency of these proceedings with improper motives but also did so to disrupt and undermine the course of the present matter. The respondent's disguise can be established by the fact that they not only created third-party rights but also executed a conveyance deed in favour of such third parties without obtaining prior leave from the Authority, and this was done before the date of the hearing, pendente lite. Moreover, the Authority notes that, although no explicit directions were issued prohibiting the respondent from creating third-party rights, but the complaint filed by the complainant pertains to possession and delay in possession charges following the termination of the relevant unit and as such, the allottee has already paid a considerable amount. But now the complainant is seeking refund and hence authority is not going further into the validity of cancellation.
22. The Authority observes that, although neither party has furnished any document on record pertaining to the buy-back arrangement, it is evident



that a buy-back option did exist and was exercised. In furtherance thereof, an advance payment of ₹1,00,000/- was remitted to the complainants by the respondent, as reflected in the customer ledger dated 24.12.2022 But no specific proposal for any deduction was conveyed. In the absence of any definitive document/buy back agreement regarding the quantum of the buy-back amount, the Authority is constrained to proceed on the presumption that such amount cannot be less than the consideration actually paid by the complainants. Furthermore, the complainants have now sought a refund of the amount paid, along with applicable interest, in accordance with the provisions of Section 18 of the Real Estate (Regulation and Development) Act, 2016.

23. In view of the above, the authority hereby directs the respondent to refund the full amount received from the complainants i.e., ₹42,47,518/- along with interest at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, after deduction of ₹1,00,000/- already paid by the respondent as a buy back advance as reflected in ledger dated 31.03.2024. The interest on the refundable amount shall accrue from the date of receiving of buy back amount i.e., 24.12.2022 till the actual date of refund of the deposited amount as per provisions of section 18(1) of the Act.

G. Directions of the authority:

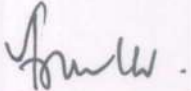
24. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations



cast upon the promoter as per the function entrusted to the authority under section 34(f):

- a. The respondent is directed to refund the amount received from the complainants along with interest at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, after deduction of ₹1,00,000/- already paid by the respondent as a buy back advance as reflected in ledger dated 31.03.2024. The interest on the refundable amount shall accrue from the date of receiving of buy back amount i.e., 24.12.2022 till the actual date of refund of the deposited amount as per provisions of section 18(1) of the Act.
25. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
26. True certified copies of this order be placed on the case file of each matter.
27. Files be consigned to registry.


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairperson


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.03.2025