

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

Complaint no. : 61 of 2024
First date of hearing: 05.01.2024
Date of decision : 06.05.2025

1. Renu Kanwar
2. Rakesh Kumar Kanwar

Regd. Address at: C-93, Ardee City, Sector 52,
Gurugram-122011

Complainants

Versus

M/s VSR Infratech Pvt. Ltd.

Regd. office: A-22, Hill View Apartments, Vasant
Vihar New Delhi-110057

Respondent

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri. Ashok Sangwan

Chairperson
Member
Member

APPEARANCE:

Mr. K.K Kohli (Advocate)
Ms. Shriya Takkar (Advocate)

Counsel for Complainants
Counsel for Respondent

ORDER

1. The present complaint dated 05.01.2024 has been filed by the complainants/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 related details

2. The particulars of unit details, 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	"68 Avenue", Sector 68, Gurugram
2.	Project area	3.231 acres
3.	Nature of the project	Commercial Colony
4.	DTCP license no. and validity status	4 of 2012 dated 23.01.2012 valid up to 22.01.2020
5.	Name of licensee	Sh. Yad Ram and Smt. Kalawati
6.	RERA Registered/ not registered	119 of 2017 dated 28.08.2017
7.	RERA registration valid up to	30.06.2018
8.	Unit no. (Old)	FC-29, 2 nd floor, Block B admeasuring 473 sq. ft. (Super area) (pg. 28 of the complaint)
9.	Allotment letter	16.01.2018 (pg. 28 of the complaint)
10.	MoU for old unit	20.01.2018 (pg. 70 of complaint)
11.	Space Buyer's Agreement for old unit	12.02.2018 (pg. 31 of complaint)
12.	New unit no.	FB-145, 1 st floor, block B admeasuring 404 sq. ft.
13.	BBA for new unit	07.02.2019 (pg. 85 of complaint)
14.	MoU for new unit	26.02.2019 (pg. 107 of complaint)
15.	Sale consideration for new unit	₹ 39,14,760/- (pg. 89 of complaint)
16.	Possession clause	31. Possession Time and Compensation "The company will be based on its present plans and estimates contemplates to offer possession of the said unit to the allottee(s) within 36

		<i>months of signing of this Agreement or within 36 months from the start of construction of the said building whichever is later with a grace period of 3 months, subject to force majeure events or governmental action/inaction".</i> (As per BBA at pg. 95 of the complaint)
17.	Due date of possession	07.05.2022 (Calculated to be 36 months from date of agreement i.e., 12.02.2018 excluding grace period of 3 months)
18.	Amount paid by the complainants	₹ 40,38,047/- [w.r.t. unit FB-145]
19.	Occupation certificate	02.08.2019 [pg. 39 of reply]
20.	Cancellation	02.01.2024 [pg. 54 of the reply]

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
 - a. The complainants had booked a service apartment/retail space etc bearing no. FB-145, having its super area of 404 Sq. Ft. in the project "68 AVENUE" of the respondents situated at Sector-68, Gurugram, Haryana for a total sale price of ₹39,14,760/- through BBA Dated 07.12.2019 and paid a sum of ₹40,38,047/- till today. The allotment letter dated 18.01.2019 was issued in respect of a service apartment/commercial unit bearing no. FB-145 in 68 Avenue, Sector-68, Gurugram and the same was sent to the complainants along-with payment plan.
 - b. That applicant was promised a food court site initially based upon the document thereafter the loan was not granted/sanctioned by the bank due to the internal compliance of bank by not giving the loans to the food court units. Thereafter respondent has given the alternative site

of retail which was the duly agreed by the applicant by entering into the builder buyer agreement dated 07.12.2019. That the total consideration amount was ₹39,14,760/- at the time of the execution of the builder buyer agreement and amount of ₹40,38,047/- has already been paid. Thereafter only pending amount which is liable to be paid by the applicant is approx. 5 lakhs.

- c. Thereafter applicants connected with respondent to execute the sale deed/convince deed in favour of the applicant but respondent has given the exorbitant amount of the dues which are not in the compliance of the builder buyer agreement. That applicant is ready and willing to pay an amount of ₹5,00,000/- approximately which is the cumulative of charges as mentioned in the builder buyer agreement. But demanding the extra payment of wrongly paid the assured returns and putting in extra 18% charges from November 2019 till 2023, without serving any demand for the same liable to be paid by the applicant is arbitrary, one-sided, and against the principle of natural justice.
- d. That therefore, this particular application is being filed to set aside the letter dated 27.12.2023 which has been given by the respondent to the applicant to make the payment of 15 lakhs approx. which builder Buyer agreement/allotment of complainant shall be cancelled. Hence, in view of the above applicant is appearing before the Hon'ble tribunal to give the possession based upon the builder buyer agreement and to set aside the unreasonable demand as it is demanded by the respondent.
- e. The respondent has given the letter dated 2nd of January 2019 stating that the said letter was sent to the applicant through Track On Courier which was never received by the applicant, it is also pertinent to



mention that no email was sent to the applicant with regard to the said demand but serving the notice by the private courier which is not visible on their website clearly shows that there is connivance of serving the wrong notice to the applicant with a private courier company which is not visible on the website and also that whether such notice was sent through the courier or not?.

- f. It is also pertinent to mention that respondent is always in communicating via email with regard to the present suit property through email, but asking the important demand letter only through courier which is not visible by the courier company website and not serving any email is a clear indication that they are hand in glove with such courier company and wrongly asking the amount.
- g. That respondent had served the letter dated 27 December 2023 stating that various reminder letter/emails and WhatsApp has been sent but where is there was no email or WhatsApp conversation except one Notice which was allegedly shown to complainant in which it was never received by the complainant. The complainant tried to search the tracking report of the same but it was not available on the website of the track on courier services.
- h. That complainant had received all the notices from the respondent through the speed post services and the envelopes of the same are being provided in the list of documents. That complainant had requested them to show the other letter apart from second January 2019 wherein they have demanded the payment as per the payment schedule but they are unable to reveal the same and after four years only giving the 10 days' notice to pay the dues which are not admitted by the complainant is against the law of natural justice. That however,



as stated above applicant is ready to pay an amount of Rs.5 lakhs approximately but not ready and willing to pay the exorbitant amount which is totally contrary to the builder buyer agreement, terms and conditions

- i. That the mismanagement of respondent is clear visible on the account of serving the possession letter on 2nd of January 2019 and serving the allotment letter of the same unit on 18th January 2019. It is clear visible that they are not working in organized manner by serving the relevant letters to the applicant but serving the notices in unprofessional manner.
- j. That despite following up on the builder buyer agreement registration with amended amount there was no response from respondent side. Surprisingly on 27.12.2023 a cancellation letter has been received from the respondent, there was no opportunity, no letter, no email was provided to the complainant for preserving his rights on the property on which she had paid an amount of ₹40,38,047/- till today. That this cancellation initiated by the respondent is "null and void, ab initio" not maintainable in the eyes of the law. Hence the present complaint for setting aside the cancellation Letter and to provide the unit to the complainant. If it in case this unit has been allotted to somebody else, then in case the existing property is allotted to third party during the pendency of present complaint it shall be provided back to the complainant having preexisting rights on the property.
- k. That the complainant has sent email and notice for withdrawal of cancellation letter and warned the respondent for allotting the unit number against the interest of the complainant to any 3rd party, respondent was reminded for the builder buyer agreement

registration and the amended builder buyer agreement with the correct amount. That as per the provision of section 13 of The Real Estate Regulation and Development Act 2016, respondent was not supposed to receive any deposit or advance without entering into agreement for sale, whereas respondent has accepted more than 10% of entire payment from the applicant towards the allotted unit but has not provided for agreement for sale and wrongly cancelled the unit of the applicant.

- I. That the complainants have undergone severe mental harassment due to the negligence on the part of the respondents to deliver the unit on time agreed. The complainants had faced all these financial burdens and hardship from their limited income resources, only because of respondent's failure to fulfil its promises and commitments. That the cause of action accrued in favour of the complainants and against the respondents on 27.12.2021 when cancellation letter for the unit bearing No. FB-145, having its super area of 404 Sq. Ft. in the project "68 AVENUE" was sent by the respondent.
- m. That the demand of the assured return paid by the respondent to the complainant has already been stopped for a very long time. Although the space buyer agreement was executed between the complainant and the respondent.
- n. That it is humbly requested by complainant that the cancellation letter dated 27.12.2023 received from the respondent on which she had paid an amount of ₹40,38,047/- till today beyond the consideration amount. This cancellation initiated by the respondent is "null and void, ab initio" not maintainable in the eyes of the law. Hence the present complaint for setting aside the cancellation Letter and to provide the unit to the

complainant. If it in case this unit has been allotted to somebody else , then in case the existing property is allotted to third party during the pendency of present complaint it shall be provided back to the complainant having preexisting rights on the property and That in the letter dated 27th of December 2023, it has been wrongly mentioned that several communication has been served upon the complainant as it is a total blatant lie, that complainant is ready and willing to pay an amount of ₹5,00,000/- approximately which is the legitimate amount only After calculating the extra charges mention in the builder buyer agreement, but not the exorbitant amount as demanded by the respondent for the payment of assured returns etc.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
 - a. Direct the respondent to set aside the cancellation Letter and to provide the unit to the complainant.
 - b. Direct the respondent to pay an amount of ₹55,000/- as cost of litigation.
5. 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.

6. The respondent has contested the complaint on the following grounds.
 - a. It is submitted that the complainants after conducting their own due diligence and after assessing the state of development made an application dated 02.01.2018 for the provisional allotment of a unit in the project developed by the Respondent known as 68 Avenue (hereinafter referred to as the "Project"). Accordingly, the



complainants were initially allotted a unit bearing no. FC-29, Food Court, on the Second Floor, Block-B vide allotment letter dated 16.01.2018 for a sale consideration of ₹33,35,123/- excluding the Interest-Free Maintenance Security (IFMS), Electricity Connection Charges, Power backup charges, Air Conditioning Charges, service tax and such other levies/cesses/VAT as may be imposed by any statutory Authority. That the Complainants accordingly entered into an MOU dated 20.01.2018 with the Respondent determining all the rights and liabilities of the parties. That as per the (MOU) the price of the unit for an area admeasuring approx. 473 sq. ft. excluding the EDC/IDC was ₹30,20,578/- which works out at a sale price of ₹6,386/- per square feet.

- b. It is pertinent to mention the price of the unit was Exclusive of Interest-Free Maintenance Security (IFMS), Electricity Connection Charges, Power backup charges, Air Conditioning Charges, service tax and such other levies/cesses/VAT as may be imposed by any statutory Authority. It is pertinent to mention here that there was no time limit provided under the MOU for handing over the possession of the unit. Thus, time was not the essence of the contract for delivering the possession. It is also pertinent to mention that the physical possession of the unit was not required to be handed over to the Complainant in any manner whatsoever as per the terms of the MOU and the Respondent was vested with the rights to directly lease out the unit to the maintaining agency for running and operating the units. That thereafter the parties have also entered into a Space Buyer's Agreement, dated 12.02.2018, wherein detailed terms and conditions pursuant to the MOU, dated 20.01.2018. It is also pertinent to mention

that the terms of the MOU were superseded by the execution of Space Buyer's Agreement and the Respondent was not liable to make payment of any amount towards the Assured Returns. That pursuant to entering into the Space Buyer's Agreement between the parties, the Complainants had applied for the grant of the Loan in order to make the payment of the outstanding dues towards the said unit.

- c. The Respondent Company after completion of construction of Tower B applied for the grant of Occupation Certificate on 28.03.2018. That during this time the project in question of Respondent was completed in all aspects as assured/specified in the MOU and more particularly in the Space Buyers Agreement and accordingly the Respondent addressed a letter dated 26.07.2018 to all the allottees in the projects including the complainants herein vide which the respondent apprised the allottees about the completion of the project and further regarding application of the occupation certificate. It is apposite to mention that the Complainants herein had approached the Respondent mentioning their disability to make the payment of the outstanding dues. The Complainants on their own accord thereafter requested that an alternative unit of similar size be allotted to the Complainant and the funds be transferred to the new unit.
- d. That the Respondent Company being the customer-oriented company acceded to the request of the Complainants and agreed to allot unit bearing FB-145, which was duly agreed to by the Complainant. The Respondent at the point of time, was in the process of raising fit-outs demand and accordingly, the fit outs letter was issued to all allottees including complainants for the new unit vide letter dated 02.01.2019. The funds from the previous unit were also transferred to the new unit

without any deductions. The Respondent Company allotted unit bearing no. FB-145 to the Complainants vide allotment letter dated 18.01.2019 for a sale consideration of ₹39,14,760/- i.e. Exclusive of Interest-Free Maintenance Security (IFMS), Electricity Connection Charges, Power backup charges, Air Conditioning Charges, tax and such other levies/cesses/VAT as may be imposed by any statutory Authority.

- e. The funds from the previous unit were also transferred to the new unit without any deductions. That pursuant to issuance of the allotment letter of the new unit, the parties had entered into an MOU, dated 26.02.2019 for the new unit, i.e. FB-145 and the Complainants were called upon to make the payment of the outstanding dues as the project of the Respondent was completed and Respondent had already applied for the grant of the Occupation Certificate on 28.03.2018. The Occupation Certificate was granted by the Competent Authorities on 02.08.2019 after due verification and inspection. It is relevant to note that post signing of the MOU, the Space Buyers Agreement was executed between the parties on 18.01.2019 wherein the detailed terms and conditions were agreed upon between the parties. It is pertinent to mention that the Respondent had also sent various demands in terms of the payment plan opted by the Complainants, but of no avail as the Complainant failed to come forward and make payment of the outstanding dues. The Respondent issued reminder letters/emails dated 11.10.2022, 18.01.2023, 28.03.2023, 27.12.2023 requesting the Complainants to come forward and clear their dues and get the conveyance deed registered but to no avail. Further, the Respondent Company despite the adverse market conditions also

made genuine efforts to lease out the unit in question along with other units and requested the Complainants to provide their consent to the leasing offer secured by the Respondent Company. The Respondent Company vide letter dated 12.04.2023 had requested the Complainants to take possession of the unit in question and start their own venture or provide mandate to the Respondent Company to lease out the unit, but to no avail.

- f. It is submitted that the last and final opportunity letter dated 27.12.2023 was also served on the Complainant to deposit the pending amount of ₹15,94,935/- however, the Complainants refused to accept the same and also failed to deposit the alleged undisputed amount. As a consequence of which the Respondent cancelled the allotment of the Complainant vide cancellation letter dated 02.01.2024 and forfeit the amount deposited. Since the Complainants herein miserably failed to make the payment of the outstanding dues (which was raised in accordance with the agreed terms) despite repeated reminders, the Respondent herein was constrained to issue cancellation letter dated 02.01.2024 thereby forfeiting a sum of ₹19,51,089/- out of the total paid amount of ₹40,38,047/-.
- g. The Respondent Company along with the cancellation letter dated 02.01.2024 refunded the balance amount of ₹20,86,958/- vide cheque bearing Nos.000460 and 000461 dated 02.01.2024, drawn on Kotak Mahindra Bank, Gurugram Branch. Thus, the Complainant has no privity of contract with the Answering Respondent and neither has any right, title or interest over the unit in question.
- h. It is submitted that the Complainants were very well aware that timely payments of demands was the essence of the transaction. The



Respondent issued reminder letters/emails dated 11.10.2022, 18.01.2023, 28.03.2023, 27.12.2023 requesting the Complainants to come forward and clear their dues and get the conveyance deed registered but to no avail. Further, the Respondent Company despite the adverse market conditions also made genuine efforts to lease out the unit in question along with other units and requested the Complainants to provide their consent to the leasing offer secured by the Respondent Company. The Respondent Company vide letter dated 12.04.2023 had requested the Complainants to take possession of the unit in question and start their own venture or provide mandate to the Respondent Company to lease out the unit, but to no avail. Since the Complainants herein miserably failed to make the payment of the outstanding dues (which was raised in accordance with the agreed terms) despite repeated reminders, the Respondent herein was constrained to issue cancellation letter dated 02.01.2024 thereby forfeiting a sum of ₹19,51,089/- out of the total paid amount of ₹40,38,047/- and refunded the balance amount of ₹20,86,958/- vide cheque bearing Nos.000460 and 000461 dated 02.01.2024, drawn on Kotak Mahindra Bank, Gurugram Branch.

- i. It is most respectfully submitted that in the case cited above, Hon'ble Apex Court has clearly held that despite the legislative change, the position on all material aspects remains the same that specific performance of a contract cannot be enforced in favor of a person who fails to prove that he had already performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him other than those terms, the performance of which has been prevented or waived by the other party and in present case

the Complainants herein have intentionally & willfully committed breach of the terms of the Agreement and the MOU.

7. Copies of all the relevant documents have been filed and placed on 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

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. 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

10. 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.

11. 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 complainants.

F.I. Direct the respondent to set aside the cancellation Letter and to provide the unit to the complainant.

12. The Complainant had booked a unit in the Respondent's project titled "114 Avenue", located at Sector 114, District Gurgaon, Haryana. Initially, vide Allotment Letter dated 16.01.2018, Unit No. FC-29, situated on the 2nd Floor of Block B in the said project, was allotted to the Complainant. Subsequently, a Memorandum of Understanding (MoU) dated 20.01.2018 was executed between the parties, wherein the Respondent assured a return to the Complainant. Pursuant thereto, a Flat Buyer Agreement (hereinafter referred to as "BBA") was entered into between the parties on 12.02.2018, stipulating a total sale consideration of ₹33,35,123/-.
13. Thereafter, upon request by the Complainant, the Respondent agreed to change the previously allotted unit and, accordingly, executed a fresh BBA on 07.02.2019 for Unit No. FB-145, admeasuring 404 sq. ft. The amounts already paid by the Complainant towards the previously allotted unit were duly adjusted against the consideration for the newly allotted unit. A fresh MoU with respect to the new unit was executed between the parties on 26.02.2019.
14. As per Clause 31 of the BBA dated 07.02.2019, the Respondent was obligated to offer possession of the subject unit within a period of 36 months from the

date of execution of the Agreement or 36 months from the date of commencement of construction of the said building, whichever is later. Since the exact date of commencement of construction is undisclosed, the due date for possession is computed from the date of execution of the BBA, i.e., 07.02.2019. Accordingly, the possession was due on or before 07.02.2022, and including the permissible grace period of three months, the final due date for possession stands as 07.05.2022.

15. The respondent obtained the occupation certificate from the competent authority on 02.08.2019. The respondent after issuance of various reminder letters dated 01.07.2023, 20.12.2023 & 27.12.2023 finally cancelled the unit of the complainant vide letter dated 02.01.2024. The complainant in its pleadings has stated that only ₹5,00,000/- was remaining to be paid after adjustment of the amount from the earlier unit and accordingly, the letter dated 27.12.2023 accompanied with demand of ₹15,94,935/- was arbitrary in nature. The respondent stated that the complainants refused to accept the same and also failed to deposit the alleged undisputed amount. As a consequence of which the Respondent cancelled the allotment of the Complainant vide cancellation letter dated 02.01.2024 and forfeit the amount deposited.
16. The complainants in the said complaint have sought the possession of the unit. After due consideration of the documents on record and the facts of the case, the Authority observes that the complainants had already paid the consideration as per the BBA and not much amount remains to be due on part of the complainants. The complainants on 06.05.2025 also stated at bar that they have also paid an amount of ₹5,00,000/- which was due on part of the complainant.

17. Moreover, the complainant also denied that they did not receive the demand letters issued by the respondent. Accordingly, the said cancellation letter dated 02.01.2024 is hereby set aside and restore the complainant's unit to its original state. The respondent is directed to hand over the actual physical possession of the unit to the complainant within 2 months from the date of this order.

F.II. Direct the respondent to pay an amount of ₹55,000/- as cost of litigation.

18. The complainant is also seeking relief w.r.t. litigation expense. It is observed that the Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* 2021-2022(1) RCR(c),357 has held that an allottee is entitled to claim compensation under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation.

G. Directions of the authority

19. 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 hand over the actual physical possession of the unit to the complainant within 2 months from the date of this order.



b. 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.

20. Complaint stands disposed of.

21. File be consigned to registry.

(Ashok Sangwan)
Member

V.L. 3
(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.05.2025

HARERA
GURUGRAM