

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

Date of decision : 04.04.2025

NAME OF THE BUILDER		VSR Infratech Private Limited	
PROJECT NAME		VSR 68, Avenue, Sector-68, Gurugram	
S. No.	Case No.	Case title	Appearance
1.	CR/5364/2023	Leelawati VS VSR Infratech Private Limited & Chetan Swara & Kirti Kalra	Adv. Ashwani Kumar Sharma (Complainant) Adv. Shriya Takkar and Smriti Srivastava (Respondent)
2.	CR/1282/2024	VSR Infratech Private Limited & Chetan Swara VS Leelawati	Adv. Shriya Takkar and Smriti Srivastava (Complainant) Adv. Ashwani Kumar Sharma (Respondent)

CORAM:
Shri Arun Kumar**Chairman****ORDER**

1. The order shall dispose off both the complaints titled as above filed before this 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 allottee 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 allottee of the projects, namely, VSR 68, Avenue, Sector-68, Gurugram being developed by the same respondent- promoter i.e. VSR Infratech Private Limited.
3. The aforesaid complaints were counter filed by the parties against each other on account of the buyer's agreement executed between the parties in respect of the said unit. The facts of both the complaints filed by the complainants are similar. Out of the above- mentioned case, the particulars of lead case **CR/5364/2023 titled as Leelawati Vs. VSR Infratech Private Limited** are being taken into consideration for determining the rights of the parties.
- A. Unit and project related details**
4. Both the cases relate to one allotted unit. One among these is filed by the allottee and the other one is filed by the builder, so far deciding both the cases, the facts of first cases are being taken. But before that the particulars of unit details, sale consideration, the amount paid by the complainant, 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	VSR 68, Avenue, Sector-68, Gurugram
2.	Nature of the project	Commercial
3.	RERA Registered/ not registered	Registered vide registration no. 119 of 2017 dated 28.08.2017
4.	License no. and validity	4 of 2012 dated 23.01.2012



5.	Unit no.	SA-4-27, 4 th floor, tower-A
6.	Unit area admeasuring	587.280 sq. ft. [page 28 of complaint]
7.	Date of booking	24.01.2012 [as per information in SBA at page 28 of complaint]
8.	Date of allotment	30.07.2012
9.	Date of Space Buyer's Agreement	25.08.2013 [Page 27 of complaint]
10.	Possession clause	<i>31. The Company will, based on its present plans and estimates, contemplates to possession of Said Unit to the Allottee(s) within 36 months of signing of this Agreement or within 36 months from the date of start of construction of the said Building whichever later with a grace period of 3 months, subject to force majeure events or Government action/in action."</i> [Page 36 of complaint]
11.	Due date of possession	25.11.2016 [calculated from the date of 36 months of signing of this Agreement with a grace period of 3 month as date of start of construction of the said Building not on record.]
12.	Total sale consideration	Rs.44,72,137/- [As per Allotment and SBA at page 30 and 55 of complaint]
13.	Amount paid by the complainant	Rs.41,00,000/-

14.	Occupation certificate /Completion certificate	02.08.2019 [Page 187-188 of the reply]
15.	Notice of possession	06.12.2021 [Page 202-207 of the reply]

B. Facts of the complaint

5. The complainant has made the following submissions in the complaint:

- i. That the Complainant is a law-abiding and peace-loving citizen of India. She enjoys a respectable status in society and is a 'consumer' within the meaning of Section 2(7) of the Consumer Protection Act, 2019, having booked a service apartment with the respondent.
- ii. That the respondent is a Private Limited Company incorporated under the Companies Act, having its registered office and is engaged in the business of real estate development and promotion.
- iii. That on 25/08/2013, the Complainant entered into an agreement with the respondent for the purchase of a service apartment, bearing No. SA4-27, 4th Floor, Tower-A in the project "68 Avenue" located at Sector 68, Gurugram, Haryana. The total sale consideration for the said unit was approximately Rs. 55,00,000/-. The Complainant has already paid a substantial sum of Rs. 41,00,000/-, with the initial payment being Rs. 4,08,160/-, towards the said apartment.
- iv. That despite repeated requests, no proper written agreement was ever furnished or executed with the Complainant, which is not only unethical but also renders the respondent claims and demands void ab initio. The project was to be completed within 36 months,

but even after 8 months beyond the stipulated time, no possession has been handed over.

- v. That the Complainant fulfilled all her payment obligations as per the agreed plan. However, the respondent has failed to deliver physical and legal possession of the unit, thereby violating the contractual obligations and established principles laid down by the Hon'ble Supreme Court regarding timely delivery by builders.
- vi. That the respondent has engaged in fraudulent conduct by issuing documents under customer code 000161 dated 01.06.2013 and another dated 20.12.2013 for the same purpose, creating ambiguity and manipulation of dates to mislead the Complainant.
- vii. That despite several attempts by the Complainant to reach out and seek clarification and redressal, the respondent has deliberately avoided all communication and failed to resolve the matter.
- viii. That an FIR No. 151/2020 was registered against the respondent for criminal offenses under Sections 406, 420, 467, 468, 471 IPC, which shows the deceptive intent and habitual conduct of the respondent in defrauding consumers. Although the FIR was quashed, the underlying allegations were serious and supported by documents.
- ix. That there is gross inconsistency in the pricing documents provided by the respondent:
 - o Statement of Account: Rs. 46,34,453/-
 - o Later Claimed: Rs. 51,75,771/-
 - o Allotment Letter: Rs. 44,72,137/-
 - o Builder Buyer Agreement (BBA): Rs. 44,72,137/-

- x. These inconsistent and arbitrary figures show clear manipulation and intent to defraud. That the BBA produced by the respondent is forged and manipulated as the Complainant never signed as "Leela Sharma." Her official and consistent signature is "Leelavati" as per all relevant identity documents and memo of parties.
- xi. That the Complainant has suffered immense mental agony, financial stress, and harassment due to the fraudulent and negligent acts of the respondent and has been deprived of both her hard-earned money and promised possession of the dwelling unit.

C. Relief sought by the complainant:

- 6. The complainant has sought following relief(s).
 - i. Direct the Respondent for an immediate refund of the amount of Rs. 41,00,000/- along with interest thereon at the rate of 18% from the due date of payments till the date of actual payment in favour of Complainants and against the Respondent.
- 7. The complainant in complaint no. 1282 of 2024 has sought following reliefs:
 - i. Direct the respondent to take the possession and pay outstanding dues.
 - ii. Alternatively, the complainant/allottee seeks the right to cancel the allotment of the respondent along with forfeiture of earnest money, delayed interest and brokerage.
- 8. 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

- 9. The respondent has contested the complaint on the following grounds.

- i. The Respondent Company submits that the present complaint is not maintainable as the Complainant has not approached this Authority with clean hands and has willfully suppressed material facts, including prior litigation and proceedings directly relevant to the subject matter. The Complainant has initiated multiple frivolous and parallel proceedings to arm-twist the Respondent and unjustly enrich herself despite being in default of her contractual obligations.
- ii. The Complainant, after reviewing the Respondent's commercial project "68 Avenue" in Sector 68, Gurugram, applied for the allotment of a service apartment and submitted the Application Form voluntarily, having fully read and understood the terms and conditions. An allotment letter dated 30.07.2012 was issued for Apartment No. SA4-27, 4th Floor, Tower A, for a total consideration of Rs. 44,72,137/- (plus applicable taxes and charges). The Complainant opted for a Construction Linked Payment Plan.
- iii. The Space Buyer's Agreement was duly executed on 25.08.2013, and the Complainant was never coerced or misled. The agreement clearly stipulates that possession shall be delivered within 36 months from execution, subject to a further grace period of 3 months and force majeure clauses. Therefore, the due date of possession was 25.11.2016, and the same was delayed due to reasons beyond the Respondent's control, including regulatory delays and lack of infrastructure by HUDA.
- iv. Despite several demand and reminder letters issued by the Respondent on 01.05.2012, 01.08.2012, 16.08.2012, 15.09.2012, 19.10.2012, 05.01.2013, 06.05.2013, 24.08.2013, 25.11.2013, 04.01.2014, 01.03.2014, 10.05.2014, 31.10.2014, and 01.06.2017,



the Complainant persistently failed to clear outstanding dues, which led to delay in execution and other consequences. The present complaint is a result of her own contractual default and hence not maintainable under law.

- v. The Respondent exercised due diligence to obtain the Occupation Certificate, which was delayed due to infrastructural limitations on water supply in Sector 68. It is only upon extensive efforts, including laying of pipelines (permission dated 21.09.2018) and arranging water through alternate sources, that OCs were granted on:

- 15.01.2019 for Ground to 2nd Floor (Block A)
- 02.08.2019 for Tower A, 3rd to 12th Floors and Tower B, Ground to 5th Floor

These delays were not due to the Respondent's fault but were covered under force majeure conditions.

- vi. The Complainant has filed multiple litigations, all of which either stand dismissed or withdrawn, clearly showing an intent to harass the Respondent:

- Consumer Complaint No. CC/189/2020 before District Consumer Forum, SW Delhi
- Criminal Complaint No. 8521/2020 (dismissed on 07.04.2022), Criminal Revision No. 307/2023 (dismissed)
- Civil Suit No. 3381/2021 (withdrawn)
- RERA Complaint No. RERA-GRG-5364-2023

- vii. The Complainant has paid Rs. 38,61,543/-, but significant dues remain unpaid along with applicable interest and charges. An offer of possession letter dated 06.12.2021 was issued, but the

Complainant has refused to comply with financial obligations, and refused to take possession of the completed unit.

viii. The Complainant booked the unit as a speculative investment for commercial gains and is therefore not entitled to protection under the Consumer Protection Act. This view has been supported by numerous judicial precedents, holding speculative investors not to be genuine consumers.

ix. The Complainant has suppressed prior litigation history, including dismissed complaints. As per the Hon'ble Supreme Court's rulings:

- Kusha Duruka v. State of Odisha [2024 INSC 46]
- K.D. Sharma v. SAIL [(2008) 12 SCC 481]

It is settled law that suppression of material facts is tantamount to fraud on the court, and such a litigant is not entitled to any relief.

x. The Respondent has performed all obligations in good faith and has made sincere efforts to obtain OC and offer possession. It is the Complainant who is in default, and the Respondent has not indulged in any unfair trade practice or deficiency in service.

xi. That the Complainant is not a genuine consumer and end user since she had booked the said unit in question purely for commercial purpose as a speculative investor and to make profits and gains.

10. 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:

11. The authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

12. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

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

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

14. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation

which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

15. Further, the Authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the *Hon'ble Apex Court in Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra) and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others* SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

16. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the Authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Finding on objections raised by the respondent.



F.I Objection regarding complainant being investor.

17. The respondent submitted that the complainant is investor and not consumer/allottee, thus, the complainant is not entitled to the protection of the Act and thus, the present complaint is not maintainable.
18. The authority observes that the Act is enacted to protect the interest of consumers of the real estate sector. It is pertinent to note that under section 31 of the Act, any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainant is an allottee/buyer and he has paid total price of Rs. 41,00,000/-to the promoter towards purchase of the said unit in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:
- "2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*
19. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between respondent and complainants, it is crystal clear that the complainants are allottees as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the

definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the complainants-allottees being investors are not entitled to protection of this Act stands rejected.

G Findings on the relief sought by the complainant.

20. The foremost question that arises before this Authority is as to whether the allottee is entitled for refund of the amount paid along with interest or the complainant be directed to take the possession of the allotted unit after clearing the outstanding dues along with interest.
21. In the present matter vide clause 31 of the BBA, the promoter has proposed to handover the possession of the subject apartment unit a period of 36 months of signing of this Agreement or within 36 months from the date of start of construction of the said Building whichever later with a grace period of 3 months. Therefore, the due date is 25.11.2016 calculated from the date of 36 months of signing of this Agreement with a grace period of 3 month as date of start of construction of the said Building is not on record.
22. The complainant/allottee filed a complaint before the authority bearing no. CR/5364/2023 on 14.12.2023 and thereafter the promoter-respondent also filed a complaint bearing no. CR/1282/2024 on 18.04.2024. It is necessary to mention here that both the complaints

were related to the same apartment and hence, both were clubbed together in order to avoid conflicting orders.

23. The complainant was allotted unit no. SA-4-27, 4th floor, tower-A 587.280 sq. ft. in the project "VSR 68, Avenue," at Sector-68, Gurugram, by the respondent/builder for a sale price of Rs. 44,72,137 /- and she has paid a sum of Rs. 41,00,000/- which is approx. 91% of the sale consideration. A buyer's agreement dated 25.08.2013 was executed between parties with regard to the allotted unit and the due date for completion of the project and offer of possession was on 25.11.2016. The respondent obtained the OC from the concerned authority on 02.08.2019 and subsequently offered the possession of the unit vide letter dated 06.12.2021, the complainant was requested to clear outstanding dues and to take the possession. The complainant failed to pay the outstanding amount due against the allotted unit.
24. The respondent issued many reminders dated 10.05.2014 and 31.10.2014 thereafter issued final demand on 01.06.2017. The Occupation Certificate for the project of the allotted unit was granted on 02.08.2019. After receipt of OC the respondent offered the possession to the complainant on 06.12.2021. It is evident from the above mentions facts that the complainant paid a sum of Rs. 41,00,000/- against sale consideration of Rs. 44,72,137/- of the unit allotted to her on 30.07.2012. The complainant has failed to adhere to the terms and conditions of the builder buyer agreement.

25. However, the deductions of earnest money shall be made accordance with the applicable laws and as per the law of the land laid down by the Hon'ble apex court of the land in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928*** and ***Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136***, and wherein it was held that *forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage.* National Consumer Disputes Redressal Commissions in ***CC/435/2019 Ramesh Malhotra VS. Emaar MGF Land Limited*** (decided on 29.06.2020) and ***Mr. Saurav Sanyal VS. M/s IREO Private Limited*** (decided on 12.04.2022) and followed in ***CC/2766/2017*** in case titled as ***Jayant Singhal and Anr. VS. M3M India Limited*** decided on 26.07.2022, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under:

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble

National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

26. Keeping in view the aforesaid factual and legal provisions, the respondents/promoter is directed to refund the paid-up amount of Rs. 41,00,000/- after deducting 10% of the sale consideration of Rs. 44,72,137/- being earnest money along with an interest @11.10% p.a. (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 on the refundable amount, from the date of filing of complaint i.e., 14.12.2023 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

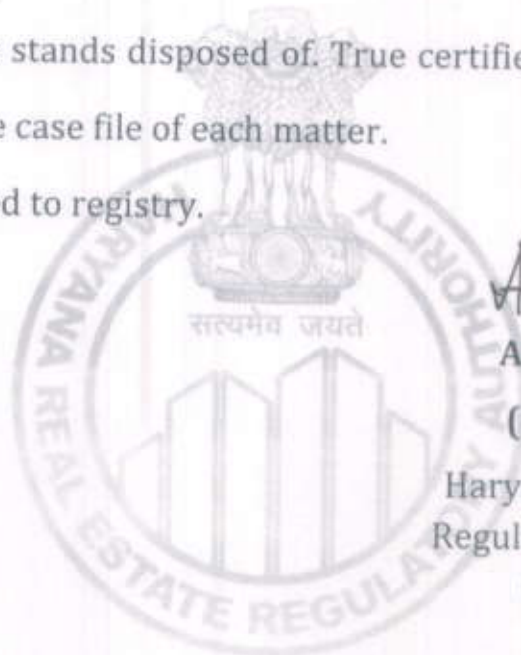
H. Directions of the authority

27. 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):
- The respondents/promoter is directed to refund the paid-up amount of Rs. 41,00,000/- after deducting 10% of the sale consideration of Rs. 44,72,137/- being earnest money along with an interest @11.10%



- p.a. (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 on the refundable amount, from the date of filing of complaint i.e., 14.12.2023 till its realization.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
28. The Complaints stands disposed of. True certified copies of this order be placed on the case file of each matter.
29. File be consigned to registry.

Dated: 04.04.2025



Arun Kumar

Arun Kumar
(Chairman)

Haryana Real Estate
Regulatory Authority,
Gurugram

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GURUGRAM