

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

Complaint no. : 6322 of 2024
Date of filing complaint : 21.12.2024
Date of decision : 23.12.2025

Mrs Kusum Chauhan

R/o:- House No. 520, Sector 10, Gurugram, Haryana
- 122001

Complainant

Versus

M/S VS Real projects Pvt Ltd

Registered office at: 74, Basement Poorvi Marg,
Vasant Vihar, New Delhi -110057

Respondent

Coram:

Shri Arun Kumar

Chairman

Shri Phool Singh Saini

Member

APPEARANCE:

Shri Sushil Yadav (Advocate)

Complainant

Shri Ishaan Dang (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainant 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 thereunder or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No.	Particulars	Details	
1.	Name of the project	ABM Selfie Square, Sector -37 D, Gurgaon	
2.	Nature of the project	Commercial Complex	
3.	RERA Registered/ not registered	Un-registered	
4.	License no. and validity	14 of 2014 dated 10.06.2014 [as per agreement at page 65 of complaint]	
5.	Unit no.	F-33, 1 st floor [Page 65 of complaint]	
6.	Unit area admeasuring	415 sq. ft. [Page 29 of complaint]	
7.	Date of booking	16.11.2015 [Page 8 of complaint]	
8.	Date of allotment	16.11.2015 [Page 8 of complaint]	
9.	Date of MoU	21.11.2015 [Page 65 of complaint]	
10.	Date of Buyers Agreement	16.06.2016 [Page 22 of complaint] Registered on 05.08.2021	
11.	Payment Plan as per BBA & MoU	<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> On booking Within 30 days of booking </div> <div style="width: 45%;"> Rs.1,00,000/- of BSP Rs.6,19,511/- + 100% (EDC + IDC) </div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> On offer of Possession </div> <div style="width: 45%;"> INR.1,95,987/- of BSP + Stamp Duty + Registration Charges + IFMS + Sinking </div> </div>	

			Fund + All other additional charges
[Page 49 & 75 of complaint]			
12.	Assured Return clause as per MoU dated 21.11.2015	2.1 <i>The Developer, agrees and undertakes to pay to the Allottee Assured Return as under:</i>	
[Page 67 of complaint]			
13.	Possession clause as per BBA	16. POSSESSION OF UNIT <i>16.1 The Company, based upon its present plans and estimates, and subject to all exceptions, proposes to handover possession of the Unit within thirty six (36) months computed from the date of execution of Buyer's Agreement, excluding additional grace period of twelve (12) months, subject to force majeure circumstances and reasons beyond the</i>	

		<i>control of the Company ("Commitment Period")</i> [Page 36 of complaint]
14.	Due date of possession	16.06.2020 [as per possession clause]
15.	Date of approval of building plan	16.07.2014 [Page 65 of complaint]
16.	Total Sale Value (BSP) for calculation of Assured return	Rs.9,15,418/- [as per agreement at page 66 of complaint]
17.	Total sale consideration (BSP + EDC + IDC)	Rs.11,38,768/- [page 29 & 66 of complaint]
18.	Amount paid by the complainant	Rs.11,89,951/- [as per receipts at page 58-63 of complaint]
19.	Occupation certificate /Completion certificate	Not obtained [As per data available on DTCP website]
20.	Notice of possession	Not offered
21.	Assured return paid	Never paid as liability to pay AR occurs only after offer of possession.

B. Facts of the complaint:

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

- That the respondent gave advertisement in various leading newspapers and electronic Media about their forthcoming project named "AMB Selfie Square" Sector 37D Gurgaon, promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondent in the aforementioned advertisements the complainant, booked a unit admeasuring 415 sq. ft. in aforesaid project of the respondent for total sale consideration is Rs.11,38,768/- which includes BSP, car parking, IFMS, PLC etc.

- b. That out of the total sale consideration of amount Rs.11,38,768/- the complainant made payment of Rs.11,68,000/- to the respondent vide different cheques on different dates. That as per MoU dated 21.11.2015 the respondent had allotted a unit bearing no. F-33 on 1st floor having super area of 415 sq. ft. to the complainant.
- c. The complainant booked the above said unit on 16.11.2015 "assured return plan", whereby as per cause 2.1 of MoU dated 21.11.2015 the developer has assured the complainant to pay an assured return at the rate of Rs.32,335/- monthly from the date of offer of possession till 36 months from issuance of letter of possession or 1st lease, whichever is earlier.
- d. That as per Clause 2.1 of the MoU dated 21.11.2015, the respondent was under legal obligation and is bound to pay the assured return of Rs.32,335/- monthly with effect from 26.04.2022. The respondent has not paid even a single penny to the complainant against the sum assured return in utter contravention of its own commitment from the effective date i.e., 26.04.2022.
- e. The complainant has taken all possible requests and gestures to persuade the respondent, whereby requesting it to pay the monthly assured return but the respondent miserably failed in doing so and to meet the just and fair demand of the complainant and completely ignored the request of the complainant.
- f. That, till today the complainant had not received any satisfactory reply from the respondent regarding payment of monthly assured returns to him. The respondent has not paid assured return to the complainant despite promises done and representation made by the respondent. In

this way, the respondent has violated the terms and conditions of the buyer's agreement /MOU and promises made at the time of booking of said unit. The respondent has committed grave deficiency in services by not paying assured returns as was promised at the time of sale of the said unit.

- g. That complainant regularly visited the site but was surprised to see that construction work is not in progress and no one was present at the site to address the queries of the complainant. That respondent has played fraud upon the complainant. The only intention of the respondent was to take payments for the tower without completing the work. The respondent mala-fide and dishonest motives and intention cheated and defrauded the complainant. That despite receiving all payment as demanded by the respondent for the said shop and despite repeated requests and reminders over phone calls, emails and personal visits of the complainant, the respondent has failed to deliver the possession of the allotted shop to the complainant within stipulated period.
- h. That it could be seen that the construction of the block in which the complainant shop was booked with a promise by the respondent to deliver the shop by 16.06.2019 but was not completed within time for the reasons best known to the respondent; which clearly shows that ulterior motive of the respondent was to extract money from the innocent people fraudulently.
- i. That due to this omission on the part of the respondent the complainant has been suffering from disruption on their arrangement, mental torture, agony and also continues to incur severe financial losses. This could be avoided if the respondent had given possession of the flat on time. That as per clause 16.6 of the buyer agreement dated 16.06.2016

it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainant a compensation @ Rs.10/- per sq. ft. per month of the super area of the shop. That a clause of compensation at such of nominal rate of Rs.10/- per sq. ft per month for the period of delay is unjust and the respondent has exploited the complainant by not providing the possession of the shop even after a delay from the agreed possession plan. The respondent cannot escape the liability merely by mentioning a compensation clause in the agreement. That the respondent has incorporated the clause in one sided buyers' agreement and offered to pay a sum of Rs.10/- per sq. ft for every month of delay. If we calculate the amount in terms of financial charges it comes to approximately @ 2% per annum rate of interest whereas the respondent charges 24% per annum interest on delayed payment.

- j. That on the ground of parity and equity the respondent also be subjected to pay the same rate of interest hence the respondent is liable to pay interest on the amount paid by the complainant @24% per annum to be compounded from the promise date of possession till the flat is actually delivered to the complainant.
- k. That the complainant has requested the respondent several times on making telephonic calls and also personally visiting to the office of the respondent for either to deliver possession of the unit at in question or to refund the amount along with interest @ 24% per annum on the amount deposited by the complainant but respondent has flatly refused to do so.
- l. Thus, the respondent in a pre-planned manner defrauded the complainant with his hard-earned huge amount and wrongfully gain himself and caused wrongful loss to the complainant.

C. Relief sought by the complainant:

- I. Direct the respondent to pay assured return along with delayed possession charges in case of failure to give possession of the subject unit to the allottee. (That vide proceedings dated 23.12.2025, counsel for complainant clarified that complainant is seeking relief of delayed possession charges on the amount-paid.)
4. 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.

C. Reply by respondent:

5. The respondent submitted the reply on 02.04.2025 and contested the complaint on the following grounds:
 - a. That the present complaint is not maintainable in law or on facts.
 - b. That the complainant does not have the locus standi or cause of action to file the present complaint.
 - c. That the complainant is not an "aggrieved party" or "allottee" as defined under the Act. The complainant is an investor who had purchased the unit in question as a speculative investment.
 - d. That the complainant has misinterpreted and misconstrued the provisions of the Real Estate (Regulation and Development) Act, 2016, hereinafter referred to as RERA and the Rules and Regulations made thereunder as well as the terms and conditions of agreement and allotment between the parties.
 - e. That the present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the

disputes raised in the present complaint can only be adjudicated by the Civil Court. The present complaint deserves to be dismissed on this ground alone.

- f. That furthermore, the payment of assured returns by a builder to a homebuyer is barred under the Banning of Unregulated Deposit Schemes (BUDS) Act, 2019. The directions to pay assured returns violated the provisions of the Act and thus, any relief pertaining to assured returns cannot be granted by the Authority. Thus, the frivolous and misconceived complaint filed by the complainant is liable to be dismissed on this ground as well.
- g. That the complainant is estopped by her own acts, conduct, acquiescence, laches, omissions etc. from filing the present petition. Furthermore, the complainant has not disclosed the real and true facts of the case, which are detailed in the succeeding paras of the present reply.
- h. That the respondent had submitted an application for grant of license to Directorate of Town and Country Planning Department, Haryana, Chandigarh for development of a commercial colony over land admeasuring 30 kanal 4 Marla (3.775 Acres approximately) situated in Sector- 37D in revenue estate of village Harsaru, Gurugram. Subsequently, License bearing no. 14 dated 10.06.2014 had been issued by Directorate of Town and Country Planning, Haryana, Chandigarh.
- i. That building plans for the project in question had been duly approved/sanctioned by Directorate of Town and Country Planning, Haryana, Chandigarh vide memo bearing no. ZP-976/AD(RA)/2014/15562 dated 16.07.2014. Thereafter, the respondent commenced construction/development of a commercial

colony under the name and style of "AMB Selfie Square" (hereinafter referred to as "said project") on the land in question.

- j. That the complainant had approached the respondent and evinced an interest in purchasing a unit in the said project. That after being fully satisfied with regard to all aspects of the project, including but not limited to the capacity/capability of the respondent to undertake conceptualization, promotion, development and construction of the same, the complainant took an independent and informed decision to purchase a unit in the said project.
- k. That the complainant was provisionally allotted unit bearing no. F-33 admeasuring 415 square feet (super area) approx. located on the first floor of the said project. The complainant had opted for a payment plan in terms of which a sum of Rs.1,00,000/- was payable upon booking, Rs.6,19,511/- within 30 days of booking, and Rs.1,95,987/- along with 100% stamp duty, registration charges, IFMS, Sinking Fund and all other charges payable in terms of the buyer's agreement, at the time of offer of possession.
- l. That the complainant and the respondent had executed a Memorandum of Understanding (MOU) dated 21.11.2015.
- m. That the buyer's agreement was willingly and consciously executed by the complainant after duly understanding and accepting the terms and conditions set out therein.
- n. That subsequently, due to the prevalence of Covid-19 pandemic, ban on construction activities in the NCR on account of orders passed by the NGT and the unforeseen delays and complications beyond the power and control of the respondent, the same constituted force majeure conditions which has delayed completion of the project as originally

planned. That construction of the project is being carried out in full swing and is nearing completion. However, the approach road from the Dwaraka Expressway is yet to be constructed by the Government. The Government has already acquired the land from the respondent for the purposes of constructing a service road adjacent to the Dwaraka Expressway through which access to the project is supposed to be given. That even if possession of units in the project is offered to the allottees, until and unless the service road is not constructed and approach is not provided by the Government, the allottees cannot access the unit/project. The respondent, on its part has been following up the matter with the Government for the said purpose but no definite time frame has been promised by the Government as on date.

- o. That the respondent is committed to completion of the project and delivering the project subject to force majeure conditions and timely payment of instalments and compliance of the terms and conditions of the agreement between the complainant and the respondent. The institution of the present complaint is highly premature and misconceived and the same is liable to be dismissed at the very threshold.
- p. That moreover, the Authority had published circular dated 27.03.2020 wherein it had been duly mentioned that the completion date of the projects registered with the Authority had been extended till 30th of June, 2020. Thereafter, the Authority had published order bearing no. 9/3-2020 HARERA/GGM (Admn) dated 26.05.2020 wherein it had been duly mentioned that the completion date of the projects registered with the Authority would automatically stand extended by a period of 6 months on account of outbreak of Covid-19. Furthermore, it had also

been stipulated in the aforesaid order that the outbreak of Coronavirus Pandemic would be considered a force majeure event, and the Developers would not need to file any application regarding invocation of force majeure clause.

- q. That Clause 16 of the buyer's agreement executed by the complainant provides that the respondent shall endeavour to give possession of the unit within 36 months computed from the date of execution of the unit/space buyer's agreement, excluding additional grace period of 12 months, subject to force majeure circumstances and reasons beyond the power and control of the respondent and subject to timely payment of instalments by the allottee. The respondent is not responsible for delay in completion of the project which has been caused due to reasons beyond its power and control. It is wrong and denied that the institution of the present false and baseless complaint is warranted under the facts and circumstances of the case.
- r. Therefore, it is obvious from the entire sequence of events that no illegality can be attributed to the respondent. Thus, the allegations levelled by the complainant qua the respondent are totally baseless and do not merit any consideration by the Authority. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

6. 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:

7. 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

8. 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

9. 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) 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.

10. 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 complainant at a later stage.

F. Findings on the relief sought by the complainant:

F.I Direct the respondent to pay delayed possession charges at prescribed rate of interest on the amount-paid.

11. The complainant applied for allotment in a commercial complex project i.e., "ABM Selfie Square" located in sector-37-D, Gurugram being developed by the respondent i.e., "M/s Real Projects Pvt. Ltd.". The respondent issued an allotment letter dated 16.11.2015 in favour of the complainant and thereby intimated about the allotment of unit no. F-33, 1st floor in the project of the respondent. Thereafter, the buyer's agreement was executed between the parties on 16.06.2016 against a sale consideration of Rs.11,38,768/- . The complainant has paid a sum of Rs.11,89,951/- towards the total sale consideration of the subject unit.

12. As per documents available on record, occupation certificate has not been applied and obtained till date. The complainant took a plea that offer of possession was to be made on or before the due date of possession i.e., 36 months from the date of execution of buyer's agreement along with grace period of 12 months as per clause 16 of buyer's agreement, but the respondent has failed to handover the physical possession of the allotted unit within stipulated period of time.

13. In the present complaint, the complainant intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

14. The subject unit was allotted to the complainant vide buyer agreement dated 16.06.2016. The due date of possession had to be calculated to be 36 months from the date of execution of the buyer agreement along with grace period of 12 months. Accordingly, the due date of possession comes out to be 16.06.2020.
15. As per Clause 16 of the buyer's agreement dated 16.06.2016 attached with the complaint provides for time period for handing over of possession and is reproduced below:

16. POSSESSION OF UNIT

16.1 The Company, based upon its present plans and estimates, and subject to all exceptions, proposes to handover possession of the Unit within thirty six (36) months computed from the date of execution of Buyer's Agreement, excluding additional grace period of twelve (12) months, subject to force majeure circumstances and reasons beyond the control of the Company ("Commitment Period")..."

16. Admissibility of delay possession charges at prescribed rate of interest:

The complainant is seeking delay possession charges at the prescribed rate. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

17. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
18. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 23.12.2025 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.
19. **Rate of interest to be paid by complainant/allottee for delay in making payments:** The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

20. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of

clause 16 of the buyer's agreement dated 16.06.2016, the possession of the subject floor was to be delivered within 36 months from the date of execution of agreement. Therefore, the due date of handing over possession was 16.06.2020. The respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/ promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit. Further no OC/CC or part OC/CC has even been applied for the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

21. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 16.06.2020 till valid offer of possession after obtaining occupation certificate plus two months from the competent Authority or actual handing over of possession whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

H. Directions of the Authority:

22. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

I. The respondent is directed to pay delayed possession charges to complainant against the paid-up amount at the prescribed rate of interest

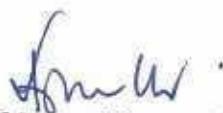
i.e., 10.80% p.a. for every month of delay from the due date of possession 16.06.2020 till valid offer of possession after obtaining occupation certificate, plus two months or actual handing over of possession, whichever is earlier as per proviso to section 18(1) of the Act read with rule 15 of the rules.

23. Complaint stands disposed of.
24. File be consigned to the registry.



(Phool Singh Saini)

Member

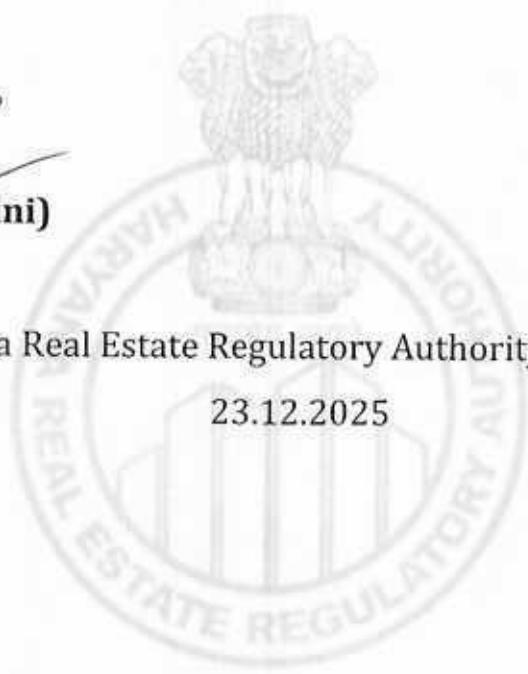


(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

23.12.2025



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