

BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
 GURUGRAM

 Date of order: **27.11.2025**

NAME OF THE BUILDER		M/s VSR Infratech Private Limited
PROJECT NAME		114 Avenue, Sector- 114, Gurugram, Haryana
S. No.	Case No.	Case title
1.	CR/3754/2024	Saroj Devi Vs. M/s VSR Infratech Private Limited
2.	CR/3755/2024	Mayank Gupta Vs. M/s VSR Infratech Private Limited
3.	CR/3757/2024	Parveen Gupta Vs. M/s VSR Infratech Private Limited
4.	CR/3759/2024	Aswini Kumar Vs. M/s VSR Infratech Private Limited

CORAM:

 Shri Arun Kumar
 Shri Phool Singh Saini

 Chairman
 Member

APPEARANCE:

 Shri Rishabh Bajaj (Advocate)
 Ms. Shriya Takkar and Ms. Meenal (Advocates)

 Complainant
 Respondent

ORDER

1. This order shall dispose of 04 complaints titled 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 allottees as per the agreement for sale executed inter se 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 project, namely, "114 Avenue", Sector- 114, Gurugram, Haryana being developed by the respondent/promoter i.e., M/s VSR Infratech Private Limited. The terms and conditions of the allotment letter, buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question seeking award of possession and delayed possession charges and execute the conveyance deed and others.
3. The details of the complaints, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"114 Avenue" at Sector 114, Gurugram.
Project area	2.968 acres
Nature of the project	Commercial colony
DTCP License No. and License Holder	72 of 2011 dated 21.07.2011 Valid up to - 20.07.2024 Licensee - AMD Estates & Developers Private Limited
RERA Registered	Registered 53 of 2019 dated 30.09.2019 Valid up to 31.12.2020
Possession clause as per buyer's agreement:	
<i>"32. That the Company shall give possession of the said unit within 36 months of this agreement or within 36 months from the date of start of construction of the said building, whichever is later..."</i>	
[Emphasis Supplied]	
Date of start of construction: Not provided	
Occupation certificate: 17.02.2021	



S. No.	Complaint no., Case title, Date of filing of complaint and reply status	Unit no. and size	Allotment Letter And BBA	Total sale consideration and Total amount paid by the complainant in Rs.	Status of Possession, OC and OFP
1.	<p>CR/3754/2024 Saroj Devi Vs. M/s VSR Infratech Private Limited DOF: 07.08.2024 RR: 20.12.2024</p>	<p>3A-10, 3rd Floor 500.88 sq. ft. (super area) [Page 22 of complaint]</p>	<p>AL: 19.11.2011 [Page 82 of reply] BBA: 09.05.2012 [Page 19 of complaint, also as admitted in para 6 of complaint as well as admitted in para 7 of reply]</p>	<p>TSC: Rs.26,17,399/- [As per clause 3 of the BBA at page 22 of complaint] AP: Rs.18,94,126/- [As mentioned in cancellation letter at page 114 of reply]</p>	<p>Due date of possession: 09.05.2015 (Note: as per clause 3 of BBA, the due date is calculated 36 months from date of execution of buyer's agreement dated 09.05.2012, as the date of start of construction is not provided)</p> <p>OC: 17.02.2021 (page 107-109 of reply)</p> <p>OPF: 06.04.2021 (page 110-111 of reply)</p>
<p>Demand and reminder letters: 10.05.2017, 30.05.2017, 06.07.2017, 02.08.2017, 22.08.2017 & 12.09.2017 (Page 95, 101-105 of reply)</p> <p>Last opportunity letter: 25.05.2023 (Page 112 of reply)</p> <p>Cancellation letter: 27.09.2023 (Page 113-115 of reply)</p>					
<p>Conveyance Deed (in favour of new allottee): 30.05.2024 (Page 40-72 of reply)</p>					
2.	<p>CR/3755/2024 Mayank Gupta Vs. M/s VSR Infratech Private Limited DOF: 07.08.2024 RR: 20.12.2024</p>	<p>3A-09, 3rd Floor 500.88 sq. ft. (super area) [Page 80 of reply]</p>	<p>AL: 19.11.2011 [Page 79-81 of reply] BBA: Copy Not Provided 04.05.2012 (As admitted in para 7 at page 3 of reply)</p>	<p>TSC: Rs.25,42,267/- [As mentioned in allotment letter at page 80 of reply] AP: Rs.17,14,195/- [As mentioned in cancellation letter at page 110 of reply]</p>	<p>Due date of possession: 04.05.2015 (Note: as per clause 3 of BBA, the due date is calculated 36 months from date of execution of buyer's agreement dated 04.05.2012, as the date of start of construction is not provided)</p> <p>OC: 17.02.2021 (page 103-105 of reply)</p> <p>OPF: 06.04.2021 (page 106-107 of reply)</p>
<p>Demand and reminder letters: 07.08.2014, 10.05.2017, 31.10.2014, 31.05.2017, 06.07.2017, 02.08.2017, 22.08.2017 & 12.09.2017 (Page 89-90, 96-101 of reply)</p> <p>Last opportunity letter: 25.05.2023 (Page 108 of reply)</p> <p>Cancellation letter: 27.09.2023 (Page 109-111 of reply)</p>					
<p>Conveyance Deed (in favour of new allottee): 01.05.2024 (Page 40-72 of reply)</p>					

3.	CR/3757/2024 Parveen Gupta Vs. M/s VSR Infratech Private Limited DOF: 07.08.2024 RR: 20.12.2024	3A-08, 3 rd Floor 500.88 sq. ft. (super area) [Page 23 of complaint]	AL: 19.11.2011 [Page 81-84 of reply]	TSC: Rs.26,17,399/- [As per clause 3 of the BBA at page 23 of complaint]	Due date of possession: 04.05.2015 (Note: as per clause 3 of BBA, the due date is calculated 36 months from date of execution of buyer's agreement dated 09.05.2012, as the date of start of construction is not provided)			
			BBA: 04.05.2012 [Page 20 of complaint, also as admitted in para 7 at page 3 of reply]	AP: Rs.14,75,911/- [As mentioned in cancellation letter at page 112 of reply]				
Demand and reminder letters: 07.08.2014, 31.10.2014, 31.05.2017, 06.07.2017, 02.08.2017, 22.08.2017 & 12.09.2017 (Page 92, 98-103 of reply)								
Last opportunity letter: 25.05.2023 (Page 110 of reply)								
Cancellation letter: 27.09.2023 (Page 111-113 of reply)								
Conveyance Deed (in favour of new allottee): 26.04.2024 (Page 40-74 of reply)								
4.	CR/3759/2024 Aswini Kumar Vs. M/s VSR Infratech Private Limited DOF: 07.08.2024 RR: 20.12.2024	3A-07, 3 rd Floor 500.88 sq. ft. (super area) [Page 23 of complaint]	AL: 19.11.2011 [Page 63-66 of reply]	TSC: Rs.26,17,399/- [As per clause 3 of the BBA at page 23 of complaint]	Due date of possession: 09.05.2015 (Note: as per clause 3 of BBA, the due date is calculated 36 months from date of execution of buyer's agreement dated 09.05.2012, as the date of start of construction is not provided)			
			BBA: 09.05.2012 [Page 20 of complaint, also as admitted in para 7 at page 3 of reply]	AP: Rs.17,27,375/- [As mentioned in cancellation letter at page 92 of reply]				
Demand and reminder letters: 09.04.2014, 10.05.2017, 31.10.2014, 31.05.2017, 06.07.2017, 02.08.2017, 22.08.2017 & 12.09.2017 (Page 73-74, 78-83 of reply)								
Last opportunity letter: 25.05.2023 (Page 90 of reply)								
Cancellation letter: 27.09.2023 (Page 91-93 of reply)								
BBA (in favour of new allottee): 06.02.2024 (Page 40-56 of reply)								

The complainants in the above complaint(s) have sought the following reliefs:

1. Direct the respondent to handover the actual physical possession of the unit of the complainant;
2. Direct the respondent to pay the compensation for delay possession and amount for the assured lease deed guarantee;

3. Direct the respondent not to charge the holding charges;
4. Direct the respondent to charge delay payment at equitable rate of interest;
5. Direct the respondent not to charge any amount which is not mentioned in the space buyer's agreement;
6. Direct the respondent not to charge any amount by raising new demands;
7. Any other relief as the Hon'ble Authority may deem fit in the interest of justice.

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing of complaint
RR	Reply received by the respondent
AL	Allotment Letter
BBA	Builder Buyer's Agreement
TSC	Total sale consideration
AP	Amount paid by the allottee/s
OC	Occupation certificate
OFP	Offer for possession

4. The aforesaid complaints were filed against the promoter on account of violation of the apartment buyer's agreement and allotment letter against the allotment of units in the project of the respondent/builder and for not handing over the possession by the due date, seeking award of possession along with delayed possession charges.
5. 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 allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case ***CR/3754/2024 titled as Saroj Devi Vs. M/s VSR Infratech Private Limited*** are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges along with interest and others.

A. Unit and project related details

7. 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:

CR/3754/2024 titled as Saroj Devi Vs. M/s VSR Infratech Private Limited

S. N.	Particulars	Details
1.	Name of the project	"114 Avenue" , Sector 114, Gurgaon
2.	Project area	2.968 acres
3.	Nature of the project	Commercial Colony
4.	DTCP license no. and validity status	72 of 2011 dated 21.07.2011 Valid up to 20.07.2024
5.	Name of licensee	AMD Estates & Developers Pvt. Ltd.
6.	RERA Registered/ not registered	Registered Vide no. 53 of 2019 dated 30.09.2019 Valid upto 31.12.2020
8.	Application form	15.06.2011 (page 73-81 of reply)
9.	Allotment letter	19.11.2011 (page 82-85 of reply)
10.	Unit no.	3A-10, 3rd Floor (page no. 22 of complaint)
11.	Unit area admeasuring	500.88 sq. ft. (super area) (page no. 22 of complaint)
12.	Date of start of construction	Not provided
13.	Date of execution of Buyer's Agreement	09.05.2012 (Page no.19 of complaint, also as admitted in para 6 of complaint as well as admitted in para 7 of reply)
14.	Possession clause	32. <i>"That the company shall give possession of the said unit within 36 months of this agreement or within 36 months from the date of start of</i>

		<i>construction of the said building whichever is later..."</i> (Emphasis supplied)
15.	Due date of possession	09.05.2015 (Note: the due date of possession is calculated from the date of execution of buyer's agreement, as date of start of construction is not provided either of the parties)
16.	Total sale consideration [BSP + EDC/IDC + IMFS]	Rs.26,17,399/- (page no. 22 of complaint)
17.	Amount paid by the complainant	Rs.18,94,126/- (As submitted at page 19 of reply and as mentioned in cancellation letter at page 114 of reply)
18.	Demand letters	10.05.2017 (page 95 of reply)
19.	Reminder letters	31.05.2017, 06.07.2017, 02.08.2017, 22.08.2017, 12.09.2017 (page 101-105 of reply)
20.	Occupation certificate	17.02.2021 (page no. 107-109 of reply)
21.	Offer of Possession	06.04.2021 (page no. 110-111 of the reply)
22.	Payment of Rs.50,000/- made by complainant	03.02.2022 (as per receipt at page 45 of complaint)
23.	Last opportunity letter	25.05.2023 (page 112 of reply)
24.	Cancellation letter along with refund cheque	27.09.2023 (page 113-115 of reply)
25.	Conveyance deed (in favor of new allottee)	30.05.2024 [page 40-72 of reply]
26.	Refund upon cancellation along with refund cheque	03.08.2024 (page 116-119 of reply)

B. Facts of the complaint:

8. The complainant has made the following submission: -
 - I. That the complainant is a law-abiding citizen of India. That the complainant is an allottee within the meaning of Section 2(d) of The Real Estate (Regulation and Development) Act, 2016. The respondent, M/s VRS Infratech Private Limited is a limited company incorporated under the Companies Act, 1956 and is inter alia engaged in the business of providing real estate services.
 - II. That somewhere around June 2011, the respondent advertised about its new project namely "114 Avenue" in sector-114, Village Bajghera, District Gurugram. The respondent painted a rosy picture of the project in their advertisement making tall claims and representing that the project aims at providing retail unit, commercial shops, car parking space, recreational facilities, landscaped gardens.
 - III. That believing the representations of the respondent and on the lookout for an opportunity of having a source of income for herself on 25.07.2011, the complainant booked a retail unit no. 3A-10 on the 3rd Floor vide application no. 210 having the super area approx..116.53 sq. mtrs. (500.880 sq. feet) in the said project at the basic rate of Rs. 4605.60 per sq. feet for a total sale consideration of Rs. 26,17,399/- inclusive of EDC/IDC and Interest Free maintenance security by making a payment of Rs.9,49,347/- as earnest money paid on 25.07.2011 only, which is duly admitted by the respondent.
 - IV. That, after the agreement the complainant, the complainant had started making the regular payments to the respondent for the above said units as and when demanded by the respondent. The complainant had already made a payment amounting to Rs.18,93,626.25/- to the respondent and

Rs.5,18,350/- is outstanding till date and the complainant ready to pay the outstanding amount to respondent.

- V. That believing on the respondent representation, the complainant kept on making payment as and when demanded by the respondent. Till date the complainant has paid a total sum of Rs.18,93,626/- towards the unit in question, as and when demanded, as against a total sale consideration of Rs.26,17,399/-. That initial payments were made the complainant from the saving of the complainant. Then, the complainant made all the payments on time and there not even a default from the side of the complainant.
- VI. That as per, the said space buyer's agreement dated 09.05.2012, the respondent proposed to handover the possession of the unit in question within a period of 36 months from 08.05.2015 i.e. from the date of execution of space buyer's agreement along with grace period of 6 months, i.e. for applying and obtaining the completion certificate in respect of the unit by 08.11.2015. However, the respondent failed in handing over possession in accordance with the said agreement. However, the respondent has not handed over the possession of the above said unit till date as the said unit is not ready for possession as the construction is not completed till date.
- VII. That the complainant has been pursuing the respondent since beginning regarding the delivery of the possession of the above said unit but the respondent has been delaying the matter on one pretext or other. That the complainant has sent many mails to the respondent but no proper response was received by the complainant regarding the delivery of the possession of the unit to the complainant.
- VIII. That the respondent has also assured the complainant the lease guarantee to the complainant to pay the assured lease amount till the delivery of the possession @ Rs.32/- per sq. ft. per month which amounts to (550.880 x 32)

Rs.16,028/- per month. Thus, the respondent is also liable to pay Rs.16,028/- per month to complainant also along with the compensation for the delayed possession.

- IX. That the respondent had made representations and tall claims that the project will be completed on time. The respondent has failed in adhering to the representations made by him and retained the hard-earned money paid by the complainant for so many years thereby causing wrongful loss to the complainant and wrongful gain to the respondent.
- X. That the respondent has failed to complete the project on time, resulting in extreme kind of financial hardship, mental distress, pain and agony to the complainant along with the delay in handing over the possession of the said unit, the respondent had failed in providing the above mentioned several amenities, services as promised by the respondent at the time of execution of the agreement.
- XI. That the present complaint has been filed in order to seek compensation on the delayed possession along with the other reliefs as mentioned in the relief clause of the complaint.
- XII. That as per section 11 (4) of the RERA Act. 2016, the promoter is liable to abide by the terms and agreement of the sale. That as per section 18 of the RERA 2016, the promoter is liable to pay interest to the allottees of an apartment, building or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale.
- XIII. Accordingly, the complainant is entitled to get compensation on the paid amount along with interest at the rate as prescribed by the Hon'ble Authority per annum from due date of possession as per flat buyer agreement and assured lease amount @ Rs.16,028/- per month from the due date of the possession till the date of handing over of possession.

XIV. That the present complaint has been filed in order to seek delay possession charges and other relief.

C. Relief sought by the complainant:

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

- i. Direct the respondent to handover the actual physical possession of the unit of the complainant;
- ii. Direct the respondent to pay the compensation for delay possession and amount for the assured lease deed guarantee;
- iii. Direct the respondent not to charge the holding charges;
- iv. Direct the respondent to charge delay payment at equitable rate of interest;
- v. Direct the respondent not to charge any amount which is not mentioned in the space buyer's agreement;
- vi. Direct the respondent not to charge any amount by raising new demands;
- vii. Any other relief as the Hon'ble Authority may deem fit in the interest of justice.

10. 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.

11. The respondent has contested the complaint on the following grounds: -

- i. That the present complaint is not maintainable in the eyes of law. That allotment of the complainant was already cancelled way back in May 2022 and yet in the present case which was filed after more than 2 years of cancellation of allotment cancellation was not challenged. That the complainant is estopped from filing the present complaint by his own act and conduct, admission, omission, laches and acquiescence.
- ii. That the present complaint is not maintainable or tenable in the eyes of the law as the complainant has approached this Authority with unclean hands

and has not disclosed the true and material facts relevant to this case of the complainant.

iii. That the complainant is 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 complainant is entitled in the least. The complainant had willfully agreed to the terms and conditions of the space buyer's agreement and is now at a belated stage attempting to wriggle out of their obligations by filing the instant complaint before this Authority.

iv. That the issues so raised in this complaint are not only baseless but also demonstrate an attempt to arm-twist the respondent into succumbing to the pressure so created by the complainant in filing this complaint before this Forum and seeking the reliefs which the complainant is not entitled to.

v. That the complainant was duly informed about the schedule of possession as per clauses 32 of the space buyer's agreement entered into between the complainant and respondent. As per clause 32, the respondent company was to handover possession of the unit within 36 months (3 years) from the date of signing of the agreement subject to the delay due to a force majeure condition or due to other reasons mentioned in clause 32. That there all the reasons as mentioned were covered under clause 32 of the agreement and thus the respondent cannot be accounted for the delay that accrued due to reasons beyond the control of the respondent as per the terms of the agreement.

vi. That the complainant 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 complainant submitted an application form for allotment of retail unit no. 3A-10. That pursuant to the

application form, the respondent company allotted commercial unit No.3A-10 having a tentative super area of 500.880 sq. ft. to the complainant vide allotment letter dated 19.11.2011. The space buyer's agreement was executed between the parties on 09.05.2012. The cost of the unit in question as per the space buyer's agreement was Rs.25,42,267/- plus IFMS, taxes, duties, levies and other charges. That the space buyer's agreement covers all rights and liabilities of both the parties. The complainant opted for construction linked payment plan. That all the demands were raised as per the payment plan opted by the complainant.

vii. That as per clause 32 of the space buyer's agreement dated 09.05.2012, the respondent was supposed to hand over the possession within a period of 36 months of the signing of this agreement i.e., 09.05.2012 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 09.05.2015. However, the said timeline was subject to force majeure conditions and the complainant making the timely payments of the outstanding dues as per the terms of the agreement executed between the parties. It is submitted that as per clause 32 of the space buyer's agreement, which clearly states that respondent shall be entitled to an extension of time for delivery of possession of the said premises if such performance is prevented or delayed due to conditions as mentioned therein. That despite exercising complete diligence and continuous pursuance of the project to be completed, the project in question could not be completed as prescribed for the following reasons:

- The substantial part of delay in delivery of the project happened as unknown to the landowner M/s AMD Developers and the developer (Respondent herein), there was an encroachment by an individual namely Mukesh alias Mahesh on part of land on which the project was

to be built. This encroachment came to the knowledge of the developer at the time when construction was to be started, after obtaining license, all the requisite sanctions, approval of building plan, etc. The aforesaid individual, Mukesh alias Mahesh filed a civil suit before the Gurgaon District Court and obtained a stay order upon the construction over the suit land in one corner of the project. The company could not start construction over the said suit land, to the extent that the project was re-visited and re-planned and the building plans had to be revised so as to exclude the encroached land as the litigation had become a prolonged one. Thus, in this process, the project was substantially delayed for approximately 4 years) without there being any fault of the answering Respondents.

- That the project in question was launched in the year 2010 and is right on the Dwarka expressway, which was supposed to be completed by the State of Haryana by the end of 2012. That the star purpose of launching the project and object of the Complaints buying the project was the connectivity of Dwarka expressway which was promised by the State Government to be completed in the year 2012. That it is reiterated that the only approach road to the project in this Dwarka Expressway which is still not complete and is likely to take another year or so. There being no approach road available it was initially not possible to make the heavy trucks carrying construction material to the project site and after a great difficulty and getting some kacha paths developed, materials could be supplied for the project to get completed which took a lot extra time. Even now the Govt has not developed and completed the basic infrastructure, despite the fact that EDC/IDC were both deposited with the State Government on time. The Dwarka Expressway was earlier scheduled to be completed by the year 2012, by the State Government of Haryana, but later failed to develop the said road. In the year 2017, NHAI joined to complete the Dwarka Expressway, but again both State Government as well as NHAI again missed the deadlines and still the Expressway is incomplete, now likely to be completed by the year 2022, if the deadline is adhered to be these agencies. That in this view of the circumstances as detailed above the respondent can by no means be

expected to complete a project which does not even have an approach road to be constructed by the State.

- That as per section 35(2) of the Act, 2016 which specifically gives power to this Authority to summon and enforce the attendance of any person and to produce any document which in the opinion of the Hon'ble Authority may be useful or relevant to the subject matter under enquiry. Thus, it is humbly submitted that both State of Haryana and NHAI may be summoned by this Authority to answer the relevant questions which are the subject matter of the present complaint.
- In the year, 2012 on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) were regulated. The Hon'ble Supreme Court directed framing of Modern Mineral Concession Rules. Reference in this regard may be had to the judgment of "Deepak Kumar v. State of Haryana, (2012) 4 SCC 629". The competent authorities took substantial time in framing the rules and in the process the availability of building materials including sand which was an important raw material for development of the said project became scarce in the NCR as well as areas around it.
- The company faced the problem of sub soil water which persisted for a period of 6 months and hampered excavation and construction work. The problem still persists and we are taking appropriate action to stop the same. On 19.02.2013, the office of the Executive engineer, Huda, Division No. II, Gurgaon vide Memo No. 3008-3181 has issued instruction to all Developers to lift tertiary treated effluent for construction purpose from Sewerage treatment plant Behrampur. Due to this instruction, the Company faced the problem of water supply for a period of 6 months.
- The company is facing the labour problem for last 3 years continuously which slowed down the overall progress of the project and in case the company remains to face this problem in future, there is a probability of further delay of project. The contractor of the project stopped working due to his own problems and the progress of project was completely at halt due to stoppage of work at site. It took almost 9 months to resolve the issues with contractor and to remobilize the site.

- The building plans were approved in January 2012 and company had timely applied for environment clearances to competent authorities, which was later forwarded to State Level Environment Impact Assessment Authority, Haryana. Despite of our best endeavour, we only got environment clearance certificate on 28.05.2013 i.e., almost after a period of 17 month from the date of approval of building plans.
- The typical design of fifth floor slab casting took a period of more than 6 month to design the shutting plans by structural engineer which hampered the overall progress of work.
- The infrastructure facilities are yet to be created by competent authority in this sector is also a reason for delay in overall project. The drainage, sewerage and other facility work not yet commenced by competent authority.
- That there was a stay on construction in furtherance to the direction passed by the Hon'ble NGT. In furtherance of the above-mentioned order passed by the Hon'ble NGT. That the sudden surge requirement of labour and then sudden removal has created a vacuum for labour in NCR region. That the projects of not only the Respondent but also of all the other Developers/Builders have been suffering due to such shortage of labour and has resulted in delays in the projects beyond the control of any of the developers. That in addition the Respondent states that this further resulted in increasing the cost of construction to a great extent.
- Moreover, due to active implementation of social schemes like National Rural Employment Guarantee and Jawaharlal Nehru National Urban Renewal Mission, there was also more employment available for labours at their hometown despite the fact that the NCR region was itself facing a huge demand for labour to complete the projects.
- That the said fact of labour shortage can be substantiated by way of newspaper articles elaborating on the above-mentioned issues hampering the construction projects in NCR. That this was certainly never foreseen or imagined by the opposite party while scheduling the construction activities. That it is submitted that even today in current scenario where innumerable projects are under construction all the developers in the NCR region are suffering from the after-effects of

labour shortage on which the whole construction industry so largely depends and on which the Respondent have no control whatsoever.

- That the Ministry of environment and Forest and the Ministry of mines had imposed certain restrictions which resulted in a drastic reduction in the availability of bricks and availability of Sand which is the most basic ingredient of construction activity. That said ministries had barred excavation of topsoil for manufacture of bricks and further directed that no more manufacturing of bricks be done within a radius of 50 km from coal and lignite-based thermal power plants without mixing 25% of ash with soil.
- That shortage of bricks in region has been continuing ever since and the Respondent had to wait many months after placing order with concerned manufacturer who in fact also could not deliver on time resulting in a huge delay in project. That sand which is used as a mixture along with cement for the same construction activity was also not available in the abundance as is required since mining Department imposed serious restrictions against manufacturing of sand from Aravali region.
- That this acute shortage of sand not only delayed the project of the answering respondent but also shot up the prices of sand by more than hundred percent causing huge losses to respondent.
- That same further cost huge delay in project and stalling various parts and agencies at work in advanced stages, for now the respondent had to redo, the said work causing huge financial burden on respondent, which has never been transferred to complainant or any other customers of project.
- That in addition the current Govt. has on 8th Nov. 2016 declared demonetization which severely impacted the operations and project execution on the site as the labourers in absence of having bank accounts were only being paid via cash by the sub-contractors of the company and on the declaration of the demonetization, there was a huge chaos which ensued and resulted in the labourers not accepting demonetized currency after demonetization.
- That in July 2017 the Govt. of India further introduced a new regime of taxation under the Goods and Service Tax which further created chaos

and confusion owing to lack of clarity in its implementation. That ever since July 2017 since all the materials required for the project of the company were to be taxed under the new regime it was an uphill task of the vendors of building material along with all other necessary materials required for construction of the project wherein the auditors and CA's across the country were advising everyone to wait for clarities to be issued on various unclear subjects of this new regime of taxation which further resulted in delays of procurement of materials required for the completion of the project.

- That there was a delay in the project also on account of violations of the terms of the agreement by several allottees. That because of the recession in the market most the allottees have defaulted in making timely payments and this accounted to shortage of money for the project which in turn also delayed the project.
- Further, Developer was faced with certain other force majeure events including but not limited to non-availability of raw material due to various stay orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby stopping/regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. That in addition to above all the projects in Delhi NCR region are also affected by the Blanket stay on construction every year during winters on account of AIR pollution which leads to further delay the projects.
- That such stay orders are passed every year either by Hon'ble Supreme Court, NGT or/and other pollution boards, competent courts, Environment Pollution (Prevention & Control) Authority established under Bhure Lal Committee, which in turn affect the project. It is further submitted that the Government of India declared a nationwide lockdown due to the COVID-19 Pandemic effective from 24.03.2020 midnight. It is submitted that the construction and development of the project was affected due to this reason as well. This Hon'ble Authority has vide its order dated 26.05.2020 invoked the force majeure clause.

viii. That after making sincere efforts despite the force majeure conditions, completed the construction and thereafter applied for the grant of the Occupancy Certificate (OC) on 15.07.2020. That the OC was received by the respondent on 17.02.2021. Immediately upon the receipt of the OC on 17.02.2021, the respondent vide letter dated 23.03.2021 requested the complainant to come forward and clear her dues and take possession. The complainant till date has made payment of Rs.18,94,126/- and an amount of Rs.23,49,794/- towards due instalment; late payment interest and other charges exclusive of stamp duty and registration charges were pending at the time of last opportunity letter dated 25.05.2023. That despite repeated requests, the complainant failed to come forward and clear their dues and take possession of the said unit. Since the Complainant did not comply with their obligation to clear the dues and take possession of the unit, the respondent was constrained to issue a last opportunity letter dated 25.05.2023 and, thereafter Termination Notice dated 27.09.2023 along with the cheque of the refundable amount to the tune of Rs.14,38,036/-. The complainant is in default of their obligation under Sec 19(10) of the Act, 2016.

ix. That the respondent has issued the termination notice dated 27.09.2023, was issued as per the space buyer's agreement and owing to the default of the complainant in coming forward to clear their dues and take possession. 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 complainant.

x. That the respondent was constrained to cancel the unit on account of non-payment of the demand as raised by the respondent. The respondent has incurred various losses/damages on account of the breach of the terms of the space buyer's agreement by the complainant, which the complainant

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 as per clause 18 of the space buyers agreement.

xi. That the post forfeiture of the amount to the tune of Rs.4,56,087/-, the respondent is only liable to refund an amount of Rs.14,38,036/- to the complainant. That cheque for an amount of Rs.14,38,036/- was attached by the respondent company along with the termination notice dated 27.09.2023. That post-issuance of the termination notice dated 27.09.2023, the complainant did not en-cash the aforesaid cheque sent along with the termination notice. Since the cheque sent along with the termination letter had become stale therefore the respondent again issued and sent a fresh cheque for the refundable amount of Rs.14,38,036/- along with a letter dated 03.08.2024.

xii. That in furtherance of the cancellation of the subject unit, the respondent has allotted the unit to one Mr. Yogesh Rana and further, conveyed the rights of the property/unit in question vide conveyance deed dated 30.05.2024 i.e. much before the filing of the instant complaint. The unit in question being cancelled there is no privity of contract between the parties and the complainant has no right, title or interest in the unit in question and neither are allottees of the same and therefore, the instant complaint filed by the complainant is infructuous.

xiii. Since the allotment of the complainant has been cancelled because of their default, the complainant has no right whatsoever over the said unit. Thus, the complainant is not entitled to get any relief as sought for from this

Authority. Failure on the part of the complainant to perform their contractual obligations disentitles them from any relief.

xiv. That the respondent has fulfilled its contractual obligations under the application form as well as the allotment letter however despite that the complainant has failed to clear the outstanding dues. The complainant is in default of their contractual obligations and is raising these frivolous issues in order to escape the liability cast upon them by virtue of the allotment and unjustly enrich themselves. Therefore, the complainant is not entitled to any relief whatsoever.

xv. That all the demands raised by the respondent are as per the schedule of payment opted by the complainant. Hence, being totally aware about the payment as per the payment plan, they failed to make timely payments and therefore is a chronic defaulter and is liable to pay interest to the respondent for the delay in payment under Section 19 (6) of the Act, 2016 which states that the complainant are responsible for making 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 the Act, 2016. It is submitted that various reminder letters dated 16.10.2013, 08.11.2013, 06.01.2014, 08.02.2014, 20.03.2014, 31.05.2017, 06.07.2017, 02.08.2017, 22.08.2017, and 12.09.2017 were issued by the respondent company on several occasions, requesting the complainant to come forward and clear their dues.

12. All other averments made in the complaint were denied in toto.

13. 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 these undisputed documents and submission made by the parties.

E. Jurisdiction of the Authority

14. 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

15. 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

16. 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.

17. 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.

F. Findings on the objections raised by the respondent.

F. I Objection regarding force majeure conditions.

18. The respondent in its reply has stated the reasons for the delay in the construction of the project for kind consideration of the authority to cover the said instance in force majeure clause and grant extension of time for calculating the due date of possession. The respondent stated that the project in question was launched in the year 2010 and is right on the Dwarka expressway, which was supposed to be completed by the State of Haryana by the end of 2012. That the star purpose of launching the project and object of the complainant buying the project was the connectivity of Dwarka expressway which was promised by the State Government to be completed in the year 2012. That it is reiterated that the only approach road to the project is this Dwarka Expressway which is still not complete and is likely to take another year or so. There being no approach road available it was initially not possible to make the heavy trucks carrying construction material to the project site and after a great difficulty and getting some kacha paths developed, materials could be supplied for the project to get completed which took a lot extra time. Even now, the Govt has not developed and completed the basic infrastructure, despite the fact that EDC/ IDC were both deposited with the State Government on time. The Dwarka Expressway was earlier scheduled to be completed by the year 2012, by the State Government of Haryana, but later failed to develop the said road. In the year 2017, NHAI (National Highway Authority of India) joined to complete the Dwarka Expressway, but again both State Government as well as NHAI again missed the deadlines and still the Expressway is incomplete, now likely to be completed by the year 2022, if the deadline is adhered to be these agencies. That in this view of the circumstances as detailed above, the Respondent

Developer can by no means be expected to complete a project which does not even have an approach road to be constructed by the State. Thus, the respondent cannot be held accountable for the delay in the project and the State of Haryana and NHAI are responsible, hence answerable for the delay in completing Dwarka expressway which in turn has caused the delay of the present project. The completion of Dwarka expressway, which in turn affected the completion of the project in question was beyond the control of the respondent. Thus, for just and fair adjudication of this complaint both State of Haryana and NHAI are necessary parties to the present proceedings for the purpose of causing the delay in the project and thus they are jointly and severally liable for the delay of the project and pay compensation to the complainants.

19. Although the term "force majeure" is not defined under the Act, 2016 or the Rules, 2017, but the literal meaning of force majeure includes an event that cannot be reasonably anticipated or controlled which may include Act of God, orders of court or any stay by government. The authority after due consideration of the facts of the case and the documents placed on record is of the considered view that the said situation cannot be treated as a force majeure as the same cannot be covered under any situation of Act of God or any stay order by court of Govt.

G. Findings regarding relief sought by the complainant:

- G.I Direct the respondent to handover the actual physical possession of the unit of the complainant;**
- G.II Direct the respondent to pay the compensation for delay possession and amount for the assured lease deed guarantee;**
- G.III Direct the respondent not to charge the holding charges;**
- G.IV Direct the respondent to charge delay payment at equitable rate of interest;**
- G.V Direct the respondent not to charge any amount which is not mentioned in the space buyer's agreement;**

G.VI Direct the respondent not to charge any amount by raising new demands;

G.VII Any other relief as the Hon'ble Authority may deem fit in the interest of justice.

20. The above-mentioned relief sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
21. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to Section 18(1) of the Act and the same is reproduced below for ready reference:

"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."

(Emphasis supplied)

22. The complainant had booked a commercial unit in the project namely "114 Avenue", Located at Sector-114, Gurugram, being developed by the respondent and allotted a unit bearing no. 3A-10, 3rd Floor, admeasuring 500.88 sq. ft. (super area) and entered into space buyer's agreement dated 09.05.2012 for a total sale consideration of Rs.26,17,399/- against which the complainant has paid a sum of Rs.18,94,126/- in all. As per clause 32 of the buyer's agreement dated 09.05.2012, the respondent was obligated to offer possession of the subject unit within a period of 36 months from the date of execution of buyer's 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 36 months from the date of execution of the

buyer's agreement i.e., 09.05.2012. Accordingly, the possession was due comes out to 09.05.2015.

23. The respondent obtained the occupation certificate from the competent authority on 17.02.2021. The respondent has pleaded that the respondent has cancelled unit of the complainant on 27.09.2023. That a demand letter dated 10.05.2017 was raised to the complainant for payment for milestone "*On casting of 6th floor slab*" and reminder letters dated 31.05.2017, 06.07.2017, 02.08.2017, 22.08.2017 and 12.09.2017 were issued against the said demand. Further, after receipt of occupation certificate from the competent authority on 17.02.2021, the respondent issued the offer for possession to the complainant on 06.04.2021 and demanded an amount of Rs.20,28,852.95/- . Upon which the complainant has only paid Rs.50,000/- on 03.02.2022 (total amount received from the complainant as on 03.02.2022 is Rs.18,94,126/-). However, on 25.05.2023, a last opportunity letter was also issued but despite repeated requests and follow ups the complainant failed to act and comply with her contractual obligations and therefore, the unit of the complainant was cancelled on 27.09.2023. Now the question before the Authority is whether the cancellation made by the respondent vide letter dated 27.09.2023 is valid or not.
24. Upon perusal of documents available on record and submissions made by both the parties, the Authority observes that, the complainant has paid an amount of Rs.18,94,126/- up to 03.02.2022 (which consists approximately 72.36% of TSC) against the total sale consideration of Rs.26,17,399/- and it is evident from the records that no further payment has been made by the complainant after 03.02.2022. It is also on record, that multiple demand/ reminder letters dated on 10.05.2017, 31.05.2017, 06.07.2017, 02.08.2017, 22.08.2017 and 12.09.2017 were sent by the respondent to the complainant,

to clear the outstanding dues. Further after receipt of occupation certificate dated 17.02.2021, the respondent has offered the possession of the office space/ unit to the complainant on 06.04.2021 along with the outstanding demand and given a last opportunity letter on 25.05.2023, prior to the cancellation of the subject unit. It is observed that as per Section 19 (6) & (7) of the Act, 2016, the complainant-allottee was under an obligation to make timely payment as per the agreed payment plan towards consideration of the allotted unit. Despite being granted several opportunities to comply with his obligations, the complainant failed to discharge his obligation for making timely payment of the outstanding dues. Thus, the respondent has cancelled the allotment of the subject unit due to non-payment on 27.09.2023. Moreover, the respondent has completed the construction and has obtained the requisite occupation certificate on 17.02.2021.

25. Further, despite demand and several reminder letters, the complainant has failed to take the possession and clearing the outstanding dues. As per clause 18 of the space buyer's agreement dated 09.05.2012, talks about the time is essence and provides the respondent has right to cancel the unit, in case the allottee has breached the space buyer's agreement executed between both the parties. Clause 18 of the buyer's agreement is reproduced as under for a ready reference:

18. That the timely payment of the instalment and other charges as states in schedule of payment (Annexure V) is the essence of this agreement. It shall be incumbent on the allottee to comply with the terms of payment and/or other terms and conditions of this agreement failing which he/she shall forfeit to the company the entire of earnest money together with interest on delayed payments and any other amount of non-refundable nature including but not confined to brokerage paid by the company and the allotment/ this agreement shall stands cancelled and the allottee shall be left with no lien, right, title, interest or any claim of whatsoever nature in the said unit along with parking space(s). the company shall thereafter be free to resell and/ or deal with the said unit in any manner whatsoever at its sole discretion. The amount(s) if any, paid

over and above the earnest money would be refunded to the allottee by the company after making deductions referred to above and only when such amounts are realized by the company from another prospective purchaser on resale of the unit but without any interest or compensation of whatsoever nature. The company shall have the first lien and charge on the said unit(s) for all its dues payable by the allottee to the company.

26. Accordingly, in terms of the payment schedule agreed upon by the parties and the fact of completion evidenced by the occupation certificate, it was incumbent upon the complainant to honour the demand and make payment as per the agreed terms. The failure to do so amounts to be breach of contractual obligations.
27. Thus, the cancellation in respect of the subject unit is hereby held valid and the relief sought by the complainant is hereby declined as the complainant-allottee has not adhered his obligation for making payment as per the agreed payment plan and has also violated the provision of Section 19(6) & (7) of the Act, 2016 by defaulting in making payments as per the agreed payment plan. In view of the above observation and findings, the Authority observes that only refund can be granted to the complainant after certain deductions as prescribed under law.
28. But after cancelling the unit, the respondent is not entitled to keep the money paid by the complainant with it and the respondent is under obligation to return the paid-up amount after deducting the amount of earnest money. The Authority observes that clause 20 of the buyer's agreement talks about that in the event of default or breach of any terms and conditions of the buyer's agreement by the allottee, the respondent is entitled to forfeit the amount of earnest money. The relevant Clause 20 of the buyer's agreement is reproduced as under for a ready reference:

20. That in case, the allotment is got cancelled by the allottee himself/ herself/ itself, he/she/it shall forfeit to the company the entire amount of earnest money together with interest on delayed payments and any other amount of non-refundable nature including but not confined

to brokerage paid by the company and the agreement for sale shall stand cancelled on the unit allottee shall be left with no lien whatsoever on the said unit. The amount, if any, paid over and above the earnest money, interest on delayed payment of instalment(s) and brokerage/commission paid by the company to any channel partner for the sale of the unit shall however, be refunded to allottee by the company without any interest after sale of the said unit.

29. However, the issue with regard to deduction of earnest money on cancellation of a contract arose 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."

30. So, keeping in view the law laid down by the Hon'ble Apex Court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, and the respondent/builder can't retain more than 10% of sale consideration as earnest money on cancellation but that was not done. Thus keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs.18,94,126/- after deducting 10% of the sale consideration of Rs.26,17,399/- being earnest money along with an interest @10.85% 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 such balance amount, from the date of cancellation i.e., 27.09.2023 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

H. Directions of the authority: -

31. 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 promoter as per the functions entrusted to the authority under sec 34(f) of the Act: -

- i. The cancellation letter dated 27.09.2023 is valid in the eyes of law. Therefore the respondent/promoter is directed to refund the paid-up amount of Rs.18,94,126/- after deducting 10% of the sale consideration of Rs.26,17,399/- being earnest money along with an interest @10.85% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR)

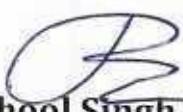
applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the such balance amount to the complainant, from the date of cancellation i.e., 27.09.2023 till its actual realization.

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.

32. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein date of allotment letter, date of execution of buyer's agreement, details of paid-up amount, demand letter, reminder letter and cancellation letter is mentioned in each of the complaints.

33. Complaint as well as applications, if any, stand disposed off accordingly.

34. Files be consigned to the registry.



(Phool Singh Saini)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 27.11.2025