

BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER, HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM.

Complaint No. 226-2024

Date of Decision: 16.03.2026

1. Mr. Chavi Mohan Bhutani S/o Mr. M. C. Bhutani, 2. Mr. Pankaj Arora S/o Mr. Sukh Dev Arora, Rs/o Flat No. 2603, Plot 1B, Sector-22, Park Royal Residency, Vasudha CGHS Ltd., Dwarka, New Delhi-110075.

...Complainants

Versus

M/s VSR Infratech Pvt. Ltd. Registered office at A-22, HILL View Apartments, Vasant Vihar, New Delhi- 110057, Corporate office at Plot No. 14, Ground Floor, Sector-44, Institutional Area, Gurugram- 122003.

....Respondent

APPEARANCE

For Complainants:

Mr. Garvit Gupta, Advocate.

For Respondent:

Ms. Shriya Takkar, Advocate.

ORDER

1. This is a complaint filed by Mr. Chavi Mohan Bhutani and Mr. Pankaj Arora (allottees), under section 31 of The Real Estate (Regulation and Development), Act 2016 (in brief Act of 2016) against M/s VSR Infratech Pvt. Ltd. (promoter).

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2. According to complainants, they approached the respondent for booking of Unit/Plot No. G-59, ground floor, measuring 905.25 sq. ft. area in the respondent's project namely '114 Avenue', Sector-114, village Bajghera, Gurugram, Haryana, on 01.09.2009. The respondent allotted the said unit to them (complainants) on 01.09.2009. A Builder's Buyer Agreement (BBA) was executed between the parties on 14.08.2012. The total sale consideration of the said unit was Rs.72,14,844.00. The total amount paid by the complainants till date was Rs.60,53,149.56. The due date of possession as per BBA was 14.08.2015. The delay in handing over possession till date of filing complaint is 8 years 4 months.

3. That the respondent has indulged in gross unfair trade practices, deficiency of service, made false promises and committed breach of contract with the complainants in regard to the unit offered to them (complainants) including few demands which are not as per BBA. It has been held by Hon'ble HARERA, Gurugram that the promoter of the project shall not charge anything from the allottees which is not part of the Agreement. The respondent had demanded unspecified advance monthly and annual maintenance charges, administration charges, contingency charges, holding charges etc. from the complainants as a deposit which is manifestly illegal and unjustified.

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4. That the respondent has unilaterally changed the layout and structure of the said allotment by increasing the area from 905.25 to 994.78 sq. ft. unit in first offer of possession sent vide letter dated 01.03.2021 which shows its glaring malafide without obtaining the requisite permissions of the complainants. The offer of possession was ^{given's} offered on 18.10.2021 against the contractually decided date of 14.08.2015 as per the agreement. Hence there has been a delay of almost 8 as on date till the physical possession. Moreover, the offer of possession dated 18.10.2021 entails numerous illegal demands. As per Clause 32 of the Agreement, the respondent had agreed to deliver the possession of the unit within 36 months from the signing of the agreement or the date of start of construction, whichever is later. The date of start of construction was 15.06.2012 as per demand letter issued by the respondent from time to time, thus the due date is calculated from the date of signing of the agreement i.e., 14.08.2012, which means that possession had to be delivered on 14.08.2015. The respondent did not abide by the terms of the agreement and thus, the possession has been delayed for more than 8 years and 4 months. This has caused them (complainants) and their family members, physical torture, mental stress, pain and anxiety issues because

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of the uncertainty in the delivery of the Unit, emotional trauma and pain to the entire family, the torture of not staying in their own dream house.

5. Contending all this, complainants have prayed for following reliefs: -

- I. To award compensation towards mental agony, physical torture and pain suffered by the complainants at the hands of the respondent, to the tune of Rs.5,00,000/-.
- II. To award compensation towards legal fees and expenses for prosecution, to the tune of Rs.3,00,000/-.
- III. To award compensation towards the loss of rent for a period of Rs.2,00,00,000/-.
- IV. To pass any other order/reliefs as it may deem fit.

6. The respondent contested the complaint by filing a written reply. It is averred that the present complaint is not maintainable or tenable in the eyes of the law as the complainants have approached this Hon'ble Authority with unclean hands and have not disclosed the true and material facts relevant to this case of the complainants. The complainants have miserably failed to make out any case for the compensation, as the complainants herein are seeking compensation on account of the loss of rental due to the delay in handing over the possession of the unit.

7. That it is the settled principle of law that if the allottee of any project is awarded the delay possession charges on account of delay in handing over the possession of the unit booked, the delayed possession

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charges are a cumulative compensation towards the mental agony, loss of rental, litigation cost etc. and there shall be no occasion for the Court to award additional compensation. In the instant case, the complainants have been awarded delayed possession charges and there shall be no occasion for the Authority to award any additional sum towards the compensation on any accounts whatsoever.

8. That the complainants ^{have} had already been compensated in terms of the delay possession interest awarded by this Authority vide order dated 03.11.2020. That pursuant to the passing of the aforementioned order, the respondent herein had obtained the occupation certificate dated 17.02.2021 from the concerned authorities and offered the possession of the unit to the complainants herein vide letter dated 01.03.2021 and thereafter the settlement talks were initiated between the parties regarding the handing over of the possession. Subsequently the offer of possession sent vide letter dated 01.03.2021 was recalled vide email, dated 24.03.2021 and thereafter the respondent issued fresh offer of possession vide letter dated 18.10.2021. As the complainants have failed to come forward to take possession and hence it is the default of the complainants, who had miserably failed to come forward for taking the possession of the unit, even till date.

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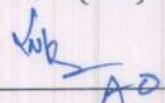
9. Contending all this, respondent has prayed for dismissal of complaint.

10. Both of the parties filed affidavits in support of their claims.

11. I have heard learned counsels appearing for both of parties and perused the record.

12. During deliberations, it is agreed by learned counsel for complainants that his clients approached the Authority seeking delay possession compensation for delay of delivery of the possession and that complaint has been allowed by the Authority vide order dated 03.11.2020, copy of which has been put on file. The respondent in that case has been directed to pay interest at the prescribed rate of 9.30% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 14.08.2015 till the actual offer of possession along with an additional period of 6 months due to certain force majeure circumstances beyond the control of the respondent, apart from some other reliefs.

13. As per learned counsel for the complainants, despite said order of the Authority, it is for the Adjudicating Officer to allow compensation for delay in handing over possession, in view of section 72 of Act of 2016. Learned counsel reminded that this Forum (AO) has



jurisdiction to allow compensation in view of Sections 12, 14, 18 and 19 of said Act. Section 18 (3) prescribes for liability of promoter to pay compensation to the allottees, if same (promoter) fails to discharge any other obligation imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale. Learned counsel claims that respondent (promoter) failed to discharge its obligation of handing over possession, in agreed time as per terms and conditions of BBA and hence, liable to pay compensation.

14. True, as per section 71, the Adjudicating Officer has been appointed for the purpose of adjudging compensation under sections 12, 14, 18 and 19 of the Act. There is no denial that in case, promoter failed to discharge his obligation imposed upon him under this Act or rule & regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he is liable to pay compensation to the allottee as prescribed under this Act.

15. It is worth mentioning here that complainants did not wish to withdraw from the project but prayed for delayed possession compensation, by filing a complaint with the Authority. The said complaint has already been allowed. Proviso added to sub section (1) of 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 handing over of possession, at such rate as may be prescribed. The parliament did not intend to provide compensation other than DPC in case allottee does not intend to withdraw from the project.

16. Following was held by Uttar Pradesh Real Estate Appellate Tribunal in case "**Greater Noida Industrial Development Authority vs. Ranjan Misra**" Appeal No. 70 of 2023 decided on 20.04.2023 (relied upon by learned counsel for respondent)-----;

"13.9. If were closely examine the above two provisions, it comes out that in a case where the Allottee exists the projects, the Act expressly provides INTEREST AND COMPENSATION both, but in cases where the Allottee tends to stay in the project the Allottee is only entitled for interest of every month till the handing over of the possession. Thus, the intention of the legislature was to provide Compensation only to those Allottees who exit the project and not to those who tends to stay in the project."

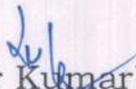
17. When complainants have already been allowed delayed possession compensation by the Authority for delay in handing over possession of allotted unit, there is no reason to allow separate

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compensation for the same cause of action i.e. delay in delivering of possession. Complaint in hands is thus dismissed.

18. File be consigned to record room.

Announced in open court today i.e. on **16.03.2026**.


(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate Regulatory
Authority,
Gurugram.