

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

Complaint no.	:	4650 of 2024
Date of complaint	:	24.09.2024
Date of order	:	07.04.2026

Shashi Mishra and Ashwani Kumar Mishra,
Both R/o: H. No. 1001, Tower-E, Celebrity
Homes, Palam Vihar, Gurugram.

Complainants

Versus

M/s VSR Infratech Private Limited
Having Regd. Office at: A-22, Hill View
Apartments, Vasant Vihar, South West Delhi,
New Delhi-110057.

Respondent

CORAM:

Arun Kumar

Chairman

APPEARANCE:

Rajan Gupta (Advocate)

Complainants

Jagdeep Yadav (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 29 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 provision of the Act or the rules and regulations made there under or to the allottee 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 complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	"68 Avenue" at Sector-86, Gurugram.
2.	Project area	3.231 Acres
3.	Nature of Project	Commercial Colony
4.	DTCP license no. and validity status	04 of 2012 dated 23.01.2012 valid up to 22.01.2020
5.	Name of Licensee	M/s VSR Infratech Private Limited
6.	Rera registered/ not registered and validity status	Registered Vide no. 119 of 2017 dated 28.08.2017 Valid up to 30.06.2018
7.	Unit No.	FA-12, First Floor, Block-A [As per page no. 15 of the complaint]
8.	Unit area admeasuring	588.14 sq. ft. (super area) [As per page no. 15 of the complaint]
9.	Allotment letter	02.01.2019 [As per page no. 15 of the complaint]
10.	Space buyer's agreement	02.01.2019 [As per page no. 17 of the complaint]
11.	Possession clause	31.The company will, based on tis present plans and estimates, contemplates to offer possession of said unit to the allottee(s) within 36 months of signing of this agreement or within 36 months from the date of start of construction of the said building whichever is later with a grace of 3 months, subject to force majeure events or governmental action/inaction...

		[As per page no. 26 of the complaint]
12.	Date of start of construction	Not provided [to be ascertained]
13.	Due date of possession	02.07.2022 [Calculated as 36 months from the date of execution of buyer' s agreement i.e., 02.01.2019, as date of start of construction is not provided, plus grace period of 6 months is allowed as per HARERA notification no. 9/3-2020 dated 26.05.2020)
14.	Date of execution of MoU	04.01.2019 [As per page no. 39 of the complaint]
15.	Assured return clause [as per MoU]	3.1 <i>"It is hereby agreed and undertaken by the developer that after offer of possession, for the period of first lease the developer shall pay to the allottee(s) lease rental @ Rs.73.33/- per sq. ft. of super area of premises per month. The assured return shall be subject to tax deduction at source, which shall be payable on due date of every English colander month in due basis."</i> [As per page no. 44 of the complaint]
16.	Lease clause [as per MoU]	2. Lease of unit. <i>"2.1 That upon completion of the complex the developer issue offer of possession to the allottee and after payment of all dues as demanded by the developer, the developer shall find out a suitable lessee the lease the premises to on such terms and conditions as may be determined by the developer..."</i>

		[As per page no. 43 of the complaint]
17.	Total Sale Consideration	Rs.68,60,653/- (excluding applicable taxes and charges) [As mentioned in clause 3 of BBA at page no. 20 of the complaint]
18.	Total amount paid by the complainants	Rs.80,66,414/- [Rs.67,59,947/- + Rs.13,05,847/-] [As mentioned in MoU on page no. 43 of the complaint plus receipt on page no. 52 of the complaint and on page no. 34 of the reply]
19.	Occupation certificate	15.01.2019 [As per DTCP website]
20.	Offer of Possession	Not on record
21.	Demand letter for payment of outstanding dues	22.02.2020 (As per page no. 48 of the reply)

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- I. That the respondent has developed a commercial colony called '68 Avenue' situated in sector- 68, Village Badshahpur, District Gurugram, Haryana.
- II. That the respondent company had spent a huge amount of money for the launch of the above project and assured the interested buyers that it will be a dream project for the investors. That complainant, being simple person, believed the promise of the respondent company and became inclined towards the project, invested all her life savings in the above project.
- III. That complainant earlier booked a service apartment No. SA5-49 of area 661.770 sq. ft. in the project "68 Avenue" Sector-68, Gurugram but later on shifted to commercial unit and was allotted one unit by respondent company bearing no. FA-12, First Floor, Block-A, 588.14 Sq.ft., in "68

Avenue" in sector-68, Gurugram. The basic sale including EDC/IDC charges of the said property was Rs.68,60,653/-.

- IV. That the complainant had made first payment in 05/04/2012 towards booking for service apartment and kept on making the payments as and when demanded by respondent company and also change the unit after discussion with respondent company, on the assurance of get the possession and assured return on the investment made by the complainant. But respondent not fulfil its promises ever made to the complainant and the shows that the intention of the respondent company from the very beginning was to cheat the complainant as the above act was nothing but to illegally gain additional time by changing the unit and nothing else.
- V. That one space buyer agreement dated 02/01/2019 also executed between complainant and respondent company and as per clause 31 of the said agreement the respondent company assured the complainant to offer possession within 36 months from the date of signing of this agreement i.e. by 02/01/2022. However, respondent company failed to deliver the possession as promised.
- VI. That one memorandum of understanding dated 04/01/2019 was also executed between the parties regarding the above said unit. That the complainant had already paid the entire sale consideration at that time i.e. execution of MOU dated 04/01/2019.
- VII. That the respondent vide above MOU offered assured return plan in the above said project to the complainant and as per clause no.3.1 of MOU, the respondent was bound to pay rent @73.33/- per sq. ft. till the offer of possession.
- VIII. That respondent company only paid assured return till March 2020 and the same made it ample clear that intention of respondent from the very beginning is to cheat the complainant and nothing else.

- IX. That despite the fact that complainant had payment of Rs.80,66,414/- including advance amount for registration and stamp chares still the respondent was failed to deliver possession and execute sale deed in favour of complainant.
- X. That complainant having gone through immense mental agony, stress and harassment has constantly raising the issue of huge delay and assured return as promised with respondent company but unfortunately no satisfactory response or any concrete information or the reasons of this huge delay and non-payment has come forth from respondent's end.
- XI. That complainant booked this unit to do her own business but all in vain and respondent had committed cheated and fraud with the complainant. Further the act of the respondent further reflect that the respondent is using the hard-earned money of the complainants for their personal gain but not for the project as assured which is illegal thereby causing huge monetary loss to the complainant.
- XII. That since the respondent failed to fulfil its promise to deliver the project by 02/01/2022 and failed to pay the assured return the complainant is no more interested in the project and wants refund of his money invested in the above project along with interest @24% per annum from the date of payment till realization from respondent/opposite party.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s):
- a) Direct the respondent to refund the paid-up amount along with interest.
5. On the date of hearing, the Authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to Section 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply by respondent:

6. The respondent vide reply has contested the complaint on the following grounds:
- i. That the compensation for assured returns/pre-possession lease rental and other relief, if any cannot be awarded by this Authority, as this Authority does not have the Jurisdiction to award any reliefs qua assured return as provided under Section 18 of the Act and in accordance with the rules, framed there under.
 - ii. That the enforcement of a memorandum of understanding entered into between the parties on the same date regarding assured return/pre-possession lease rental before and after the offer of possession is a matter of a civil nature, only to be dealt with by a civil court/consumer court as the case may be.
 - iii. That the MOU was entered into between the parties and, as such, the parties are bound by the terms and conditions mentioned in the said MOU. The said agreement for sale was duly signed by the complainant after properly understanding each and every clause contained in the agreement for sale. The complainant was neither forced nor influenced by the respondent to sign the said MOU. It was the complainant who, after understanding the clauses, signed the said agreement for sale in her complete sense.
 - iv. That the complainant made an application for provisional allotment of a commercial unit bearing no FA-12, located on the first floor, has a super area of 588.14 Sq. feet falling in the commercial colony in the project being developed by the respondent known as VSR "68 Avenue" which is now known as 68 Avenue located at Sector-68, Gurugram.
 - v. That pursuant to the application form, the respondent company issued an allotment letter dated 02.01.2019 to the complainant herein of the commercial unit bearing no FA-12, having a tentative measuring area of

588.14 sq.ft. for a basic sale price is Rs.64,69,540/- excluding EDC/IDC and other charges of Rs.3,91,113/-. It is stated that the complainant had specifically opted for an investment return plan and in pursuance thereof, a memorandum of understanding was executed on 04.01.2019 with the complainant herein regarding assured return of the said unit. It is submitted that the consideration paid by the complainant on the application of booking may early been reiterated in the said MOU, and thus, no separate consideration has been paid by the complainant under the said MOU. It is stated that accordingly the basic sale price of Rs. 68,60,653 /-as agreed under the said MOU.

- vi. That the answering respondent company sent a letter to the complainant on 22nd February 2020 for clearing the outstanding dues against said unit wherein it was stated that as per the offer of possession letter dated 30th August 2018, the complainant had a sum of Rs.19,22,083/- pending which needs to be paid as per the said clause 1.4 MOU dated 04.01.2019 and as per the requirements certain documents have to be submitted by the answering respondent company for getting the possession but till date neither has any standing amount due or submitted any possession regarding the answering respondent company.
- vii. That pursuant to the mutual understanding between the parties, the respondent had paid advance lease rent to the complainant for the period commencing from February 2019 to October 2021. It is submitted that during the said period, the respondent has paid a total sum of ₹9,91,944/- towards advance lease rent to the complainant.
- viii. That the as per the terms of the MOU. It was also agreed that the respondent will pay the first lease rental at the rate of Rs.73.33/- per sq.ft of the super area after the offer of possession of the said commercial unit. However, the payment of assured return was subject to the Force majeure clause as provided under clause 6.1 & of the MOU.

- ix. That without prejudice to the above, it is in the humble submission of the answering respondent that the Banning of Unregulated Deposit Schemes Act, 2019 (the "BUDS Act") was notified by the Government of India. As a consequence of the above, the assured return linked to sale consideration and the assured rental linked to leasing arrangement as contemplated under the said MOU fall under the ambit of deposit and the same falls under the ambit of unregulated deposit scheme. Accordingly, clauses of the MOU related to pre-possession lease rental, to the extent inconsistent with the provisions of the said Act, have become void, illegal and unenforceable and shall be deemed to be deleted so as to conform to applicable laws, without any liability on either party.
- x. That the complainant did not come forward to clear her dues. It is submitted that though the respondent company acceded to the request of the complainant, the complainant failed to come forward to clear her dues.
7. 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 those undisputed documents and submissions made by the parties.
- E. Jurisdiction of the authority:**
8. 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**
9. 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

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee's 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.

11. So, in view of the provisions of the Act quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter.

F. Findings on the relief sought by the complainants.

F.I Direct the respondent to refund the paid-up amount alongwith interest.

12. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest from the date of payment until realization under Section 18(1) of the Act. Sec. 18(1) of the Act 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. -

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that

apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

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."

13. **Due date of handing over possession:** Clause 31 of the buyer's agreement dated 02.01.2019 provides for handing over of possession and is reproduced below:

*31. The company will, based on its present plans and estimates, contemplate to offer possession of said unit to the allottee(s) **within 36 months of signing of this agreement or within 36 months from the date of start of construction of the said building whichever is later** with a grace of 3 months, subject to force majeure events or governmental action/inaction..."*
(Emphasis supplied)

14. As per clause 31 of the buyer agreement dated 02.01.2019, the respondent/promoter undertook to handover possession of the unit to the complainants within 36 months from the date of execution of the agreement, with an extension of three months due to force majeure conditions. The Authority observes that a grace period of 6 months on account of covid-19 as per HARERA notification no. 9/3-2020 dated 26.05.2020 has already been granted in this regard and thus, no period over and above grace period of 6 months can be given to the respondent. Thus, the due date of possession comes out to be 02.07.2022.

15. **Admissibility of refund:** In the present complaint, the complainants intend to withdraw from the project and are seeking refund of the amount of the amount paid along with interest. The Authority observes that the occupation certificate for the said project has already been obtained by the respondent from the competent authority on 15.01.2019. However, the complainants have filed the present complaint seeking refund under Section 18 of the Act on 24.09.2024. There has been such a long unexplained delay in pursuing the matter. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of consumers. However,

this cannot be fetched to an extent that basic principles of jurisprudence are ignored. The procedure of law cannot be allowed to be misused by the litigants. It is a principle of natural justice that nobody's right should be prejudiced for the sake of other's right, when a person remained dormant for such an unreasonable period of time without any just cause. The Authority is of view that although the law of limitation does not strictly apply to the Act of 2016. However, the Authority under Section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim that "*the law assists those who are vigilant, not those who sleep over their rights*". Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances. Therefore, considering the above, it is determined that the present complaint has not been filed within a reasonable time period.

16. The Authority further observes that Section 18(1) is applicable only in the eventuality where the promoter fails to complete or unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein. This is a case where the promoter has already completed the project and has obtained occupation certificate from the competent authority on 15.01.2019 i.e. before the due date of possession. The allottees have approached the Authority seeking withdrawal from project after a passage of more than 5 years from date of obtaining occupation certificate and never before. The right under Section 18(1)/19(4) of the Act, 2016 accrues to the allottee on failure of the promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. If allottee has not exercised the right to withdraw from

the project after the due date of possession is over, till the receipt of occupation certificate, it can be inferred that the allottee has tacitly consented to continue with the project. The promoter has already invested in the project to complete it. Now, when unit is ready for possession, such withdrawal on considerations other than delay such as reduction in the market value of the property and investment purely on speculative basis will not be in the spirit of the Section 18 of the Act. Moreover, Section 19(10) of the Act obligates the allottee to take possession of the unit within a period of two months from the date of issuance of occupation certificate.

17. This view is supported by the judgement of Hon'ble Supreme Court of India in case of ***Ireo Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors. (Civil appeal no. 5785 of 2019)***, wherein the Hon'ble Apex court took a view that those allottees are obligated to take the possession of the apartments since the construction was completed and possession was offered after issuance of occupation certificate. Relevant para of the said order is reproduced under for ready reference:

"(i) We are of the view that allottees at Serial Nos. 1 and 2 in Chart A are obligated to take possession of the apartments, since the construction was completed, and possession offered on 28.06.2019, after the issuance of Occupation Certificate on 31.05.2019. The Developer is however obligated to pay Delay Compensation for the period of delay which has occurred from 27.11.2018 till the date of offer of possession was made to the allottees."

18. In view of the above, the present complaint stands dismissed being not maintainable.
19. File be consigned to the registry.


(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.04.2026