

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

Complaint no. : 3782 of 2024
Date of complaint : 12.08.2024
Date of order : 07.04.2026

Alka Bhayana,
R/o: House no. G-25, Third Floor, South
City- I, Sector 41, Gurugram, Haryana.

Complainant

Versus

M/s VSR Infratech Private Limited
Having Registered office at: A-22,
Hill View Apartments, Vasant Vihar, New Delhi.

Respondent

CORAM:

Arun Kumar

Chairman

APPEARANCE:

Surender Yadav (Advocate)

Complainant

Jagdeep Yadav (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions as provided under the provision of the Act or the rules and regulations made there under or to the allottee as per the memorandum of understanding executed *inter se*.

A. Project and unit 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. No.	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-08, First Floor, Block-A [As per page no. 23 of the complaint]
8.	Unit area admeasuring	486.75 sq. ft. (super area) [As per page no. 23 of the complaint]
9.	Allotment letter	23.03.2021 [As per page no. 23 of the complaint]
10.	Space buyer's agreement	Not executed
11.	Date of execution of MoU	31.03.2021 (page 25 of complaint)
12.	Possession Clause	Not on record
13.	Due date of possession	Not required as the unit was ready to move-in
14.	Lease clause	<u>Article 2</u> <u>Post Possession- Lease of Unit</u> <i>"That upon the completion of the Complex and upon receipt of the Sale Consideration and dues as demanded, the Developer shall issue offer of possession to the Allottee subject to reservation of a lease back right with the Developer on such terms and conditions including the initial Lock in Period as may be determined by the Developer. The Developer reserves all the right to club the units, create blocks, demarcate or re-demarcate the Units including the here-</i>

		mentioned Unit for the purpose of leasing the unit or to appoint operator/lessee to manage them.” [As per page no. 31 of the complaint]
15.	Lease rental clause [as per MoU]	3. Lease Rental “3.1 The Allottee shall be in receipt of First Lease Rental @ Rs. 104/- (Rupees One Hundred and Four Only) per sq. ft. of super area of the premises per month beginning from 16.05.2021. (hereinafter interchangeably referred to a “Post Possession Lease Rental and Lease Rental...” [As per page no. 32-33 of the complaint]
16.	Total Sale Consideration	Rs.66,24,035/- (excluding applicable taxes and charges) [As mentioned in clause 1.1 of MoU at page no. 30 of the complaint]
17.	Total amount paid by the complainant	Rs.66,24,035/- [As mentioned in clause 1.2 of MoU on page no. 30 of the complaint]
18.	Occupation certificate	15.01.2019 [As per DTCP website]
19.	Offer of Possession	Not on record
20.	Demand letter/Reminder for payment of outstanding dues	20.02.2024, 06.03.2024 (As per page no. 49-54 of the reply)

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That the complainant has purchased a unit in re-sell from her erstwhile owner i.e., unit no. FA-08, measuring an area of 486.75 Sq. ft., in tower-A, in the project named, “68 Avenue”, Sector-68, Badshahpur, Gurugram, Haryana, against a sale consideration of Rs.66,24,035/-.
- II. That after purchasing the said unit in the re-sell, the respondent issued an allotment letter dated 23.03.2021, whereby allotted he said unit to the complainant.

- III. That the complainant has purchased the said unit from her erstwhile owner, due to which the complainant did not take any documents including but not limited to allotment letter, builder buyer's agreement, memorandum of understanding etc. from previous owner of the unit nor the same were supplied /furnished by the respondent to the complainant.
- IV. That while purchasing the said unit, it was represented and assured by the respondent that the unit is under scheme of assured return, and the respondent would continue to pay assured return till first lease of the unit.
- V. That on 31.03.2021, the respondent executed a Memorandum of Understanding in favor of the complainant. However, the complainant has chosen the assured return plan and as per Article-3.1 of the MOU dated 31.03.2021, it was agreed and undertook by the respondent that the allottee shall be in receipt of first lease rental @ of Rs.104/- per sq. ft. of super area of premises per month beginning from 16.05.2021. The assured return shall be payable on or before the 7th day of every English Calendar Month. The complainant has already paid the full and final payment of Rs.66,24,035/- to the respondent and no amount is left to be paid by the complainant to the respondent as on the date of filing of the present complaint.
- VI. That as per the memorandum of understanding the respondent was obligated to and undertook to pay the assured return to the complainant "Till the notice for offer of possession is issued, the developer shall pay to the Allottee an assured return at the rate of Rs.104/- per sq. ft. of super area of the premise per month. The respondent was paying assured returns to the complainant on time till March 2020. Thereafter, the respondent stopped paying the assured return to the complainant.
- VII. That the following charges have been demanded by the respondent through various letters as mentioned below: -



Sr. No.	Description	Amount (INR)	Allottee(s) Remarks
1.	Interest Free Maintenance Security	73,013	Mentioned in the MOU and agreed.
2.	Power Back-up Charges (PBC)	80,606	Mentioned in the MOU and agreed
3.	Bulk Electricity	58,410	Mentioned in the MOU and agreed
4.	CAM (February 2019 to March 23) @ 4.80/- psf. Per month (50 m)	1,16,820	Not agreed, as the possession of the Unit has been handed over in the year 2023, thus, CAM is not applicable for the period, for which possession was handed over to the Complainant
5.	CAM (Apr 2023 to March 24) @ 13.80 psf. p.m. (12 m)	80,606	Not agreed, as the possession of the Unit has been handed over in the year 2023, thus, CAM is not applicable for the period for which possession was handed over to the Complainant
7.	CGST @ 9% on Bulk & CAM	23,025	To be re-calculated.
8.	SGST @ 9% on Bulk & CAM	23,025	To be re-calculated.
9.	Property Tax – MCG (FY 2022 to 24 @ 15/- psf p.a.) 02 years	14,603	The possession was not handed over the year and the respondents has also not paid Assured Return w.e.f. May 2022 and can be adjusted in the same. The property is not registered yet. If at all these charges have to be paid before the registration of the property, the allottee will pay directly to concerned authorities. The court is requested to check the legality for such demand and impose suitable penalty on builder.
12.	Interest on Outstanding @ 18% (Feb 24 to March 24) 02 months	14,103	The Complainant is not liable to pay anything to the respondent, rather, the respondent is liable to pay the interest to the Complainant on he delayed payment/stop payment of Assured Return.

VIII. That as per the Schedule-3 Payment Plan, it is mentioned that Interest Free Maintenance Security (IFMS) and power back-up charge only are to be paid

by the allottee and whereas other charges, as mentioned at Serial No. 3, 4, 5 and 6 are not the part of MOU; hence, cannot be demanded, as those were never agreed upon between the parties.

- IX. That the respondent has not paid the assured returns w.e.f. May 2022 in addition to delayed possession charges to the complainant and till now the complainant has not been handed over the possession of the said unit despite all promises done and representation made by the respondent. By committing delay in delivering the possession of the aforesaid unit, assured return and delayed possession charges, the respondent has violated the terms and conditions of the MoU and promises made at the time of booking of said unit.

C. Relief sought by the complainant: -

4. The complainant has sought following relief(s):
- I. Direct the respondent to handover possession and to pay delay possession charges.
 - II. Direct the respondent to pay the pending/accrued assured returns to the complainant.
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 the respondent.

6. The respondent contested the complaint on the following grounds: -
- i. That the complainant is praying for the relief of Post-Possession Lease Rental, which is beyond the jurisdiction this Authority has been bestowed. The enforcement of a memorandum of understanding entered into between the parties on the same date regarding Assured return/post-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.

- ii. 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 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.
- iii. That the complainant made an application for provisional allotment of a commercial unit bearing no FA-08, located on the first floor, has a super area of 486.75 sq. ft. falling in the commercial colony in the project being developed by the respondent known as VSR "68 Avenue" located at Sector-68, Gurugram. Pursuant to the application form, the respondent issued an allotment letter dated 23.02.2021 to the complainant of the commercial unit bearing no FA-08, having a tentative measuring area of 486.75 sq. ft. for a basic sale price is Rs 66,24,035/- and also applicable charges levied by any concerned authority.
- iv. That the respondent sent demand letters to the complainant on 20.02.2024 and 06.03.2024 for clearing the outstanding dues against the unit which needs to be paid as per the said clause 1.3 & 1.1 MOU dated 31.03.2021 and as per the requirements certain documents have to be submitted by the respondent for getting the possession but till date neither has any standing amount due or submitted any possession regarding the answering respondent company.
- v. That the respondent on the basis of mutual understanding, agreed to the terms proposed by the complainant and accordingly commenced payment of one month's advance lease rent amounting to Rs.50,622/-.
- vi. That 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.104/- per sq.ft. of the super area after the offer of possession of the said commercial unit. 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. Furthermore, nowhere in the MOU executed between the parties is it mentioned that the respondent is bound to hand over possession of the said unit unconditionally or without execution of the final sale/conveyance deed. Therefore, the relief claimed is without merit and against the agreed terms.

- vii. That the complainant's claim for post-lease rent is misplaced and misconceived. As per industry practice and the understanding between the parties, any lease rent or benefits post-possession are to be transferred only after the execution and registration of the conveyance deed in favor of the buyer, which has not been executed due to the complainant's failure to fulfil the necessary obligations.
- viii. That it is also submitted here that the complainant is not entitled to any compensation or charges for alleged delay in possession, as:
- a. There exists no possession clause or timeline in the MOU that binds the respondent to deliver possession by a specific date.
 - b. The delay, if any, was caused due to multiple factors, including non-payment of dues by the complainant, change in regulatory environment, and administrative delays, which were duly communicated and acknowledged.
 - c. That it is pertinent to mention here that the complainant remained in breach of the contract by failing to honour agreed terms, thereby disentitling him from any claim of compensation.

- ix. That as per MOU dated 31.03.2021 the complainant is liable to pay the outstanding dues in a timely manner to the answering respondent, but the complainant fails to clear the outstanding dues in a timely manner.
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 based on these undisputed documents and submission 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 the 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 as per flat buyer's agreement. 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 complainant.

F.I Direct the respondent to handover possession and to pay delay possession charges.

12. 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. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

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

.....

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

13. In the instant case, it is determined that a ready to move-in unit was allotted to the complainant vide allotment letter dated 23.03.2021 as the Occupation Certificate for the project in question had already been obtained by the respondent from the competent authority on 15.01.2019. Section 19(6) & 19(7) of the Act provides that every allottee shall be responsible to make necessary payments as per agreement for sale along with prescribed interest on outstanding payments from the allottee and to take physical possession of the apartment as per Section 19(10) of the Act. The respondent has sent demand letters dated 20.02.2024 and 06.03.2024 to the complainant for clearing the outstanding dues against the unit which needs to be paid as per the said clause 1.3 & 1.1 MOU dated 31.03.2021. However, the same remains unpaid till date. Considering the above-mentioned facts, the Authority observes that there is no delay on part of the respondent in offering

possession of the unit. Moreover, the complainant has never suffered any delay as the ready to move in property was to be handed over to her subject to payment of the balance consideration, which has not been paid by her till date. So, there is no equity in favour of the complainant. Hon'ble Apex Court has also categorically held in many judgements that the rules and procedure are handmaid of justice and not its mistress.

14. Further, proviso to Section 18(1) of the Act, 2016, provides that in case, the allottee does not intend to withdraw from the project, the promoter is liable to pay interest at the prescribed rate on the amount paid in respect of unit for every month of delay, till the handing over of the possession if it fails to complete or is unable to give possession of the unit in accordance with the terms of the agreement for sale or due to discontinuance of business. However, the present case does not fall in any of the requisite conditions of Section 18 of the Act and accordingly no case for delay possession charges is made out under Section 18 of the Act read with Rule 15 of Rules, 2017; but the respondent is obligated to handover possession of the unit to the complainant in terms of the MoU dated 31.03.2021.

F.II Direct the respondent to pay assured returns/lease rental to the complainant as per MoU.

15. The complainant is seeking relief with respect to payment of post-possession lease rental as per the agreed terms of the MoU dated 31.03.2021. The Authority observes that vide clause 3.1 of the MoU dated 31.03.2021, it was promised and assured by the respondent that an amount of Rs.104/- per sq.ft. of super area of premises per month will be paid to the complainant as lease rental beginning from 16.05.2021. The relevant portion of clause 3.1 of MoU is reproduced below for the ready reference:

3. Lease Rental

"3.1 The Allottee shall be in receipt of First Lease Rental @ Rs. 104/- (Rupees One Hundred and Four Only) per sq. ft. of super area of the premises per month beginning from 16.05.2021. (hereinafter interchangeably referred to a "Post Possession Lease Rental and Lease Rental."

16. Further as per Section 11(4)(a) of the Act of 2016, the promoter is responsible for all obligations and responsibilities as per the provisions of the Act or the terms agreed as per agreement for sale. The relevant portion of Section 11(4)(a) is reproduced below:

(4) The promoter shall

(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 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:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

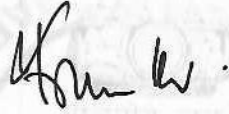
17. The Authority observes that the respondent has received the occupation certificate from the competent authority on 15.01.2019 and as per the MoU dated 31.03.2021, it was obligation on part of the respondent to pay the lease rental at agreed rate to the complainant. It is necessary to mention here that the respondent has failed to fulfil its obligation as agreed inter se both the parties in MoU dated 31.03.2021. Accordingly, the liability of the respondent to pay lease rental as per MoU is still continuing. Hence, the respondent is directed to pay post-possession lease rental to the complainant at the agreed rate i.e., @Rs.104/- per sq.ft. of super area of premises per month from 16.05.2021, as per clause 3 of the MoU dated 31.03.2021, after deducting the amount already paid on account of lease rental to the complainant, if any.

G. Directions of the authority

18. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under Section 34(f):

- i. No case for delay possession charges is made out under Section 18 of the Act.

- ii. The respondent is directed to pay post-possession lease rental to the complainant at the agreed rate i.e., @Rs.104/- per sq.ft. of super area of premises per month from 16.05.2021, as per clause 3 of the MoU dated 31.03.2021, after deducting the amount already paid on account of lease rental to the complainant, if any.
 - iii. The respondent is directed to handover possession of the unit to the complainant in terms of the MoU dated 31.03.2021.
 - iv. The respondent shall not charge anything from the complainant which is not part of the MOU dated 31.03.2021.
19. Complaint stands disposed of.
20. File be consigned to registry.



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.04.2026

HARERA
GURUGRAM