

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

Complaint no. : 2876 of 2019

First date of hearing : 06.12.2019

Date of decision : 03.11.2020

1. Shri Pramod Kumar Gogna

2. Smt. Kunjika Gogna

Both Resident of:- D-10, 3rd Floor, East of
Kailash, New Delhi-110065

Complainants

Versus

M/s VSR Infratech Pvt. Ltd.

Regd. Office:- Plot No. 14, Ground Floor,
Sector-44, Institutional Area, Gurugram,
Haryana-122003

Respondent

CORAM:

Shri Samir Kumar

Shri Subhash Chander Kush

Member

Member

APPEARANCE:

Shri Pramod Kumar Gogna

Complainant in person

Shri Varun Budhiraja

Advocate for the complainants

Ms. Shreya Takkar

Advocate for the respondent

ORDER

1. The present complaint dated 16.07.2019 has been filed by the complainants/allottees in Form CRA 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 to the allottee as per the agreement for sale executed inter-se them.

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

S. No.	Heads	Information
1.	Project name and location	"114 Avenue", Sector-114, Village Bajghera, Gurugram, Haryana.
2.	Area of the project	2.97 acres
3.	Nature of the project	Commercial Complex
4.	DTCP License	72 of 2011 dated 21.07.2011
5.	Valid upto	20.07.2024
6.	RERA registration	53 of 2019 dated 30.09.2019
7.	Valid upto	31.12.2019 (expired)
8.	Unit no.	G-04, Ground Floor,
9.	Unit measuring (super area)	560.16 sq. ft.
10.	Date of execution of space buyer's agreement	12.10.2012
11.	Total sales consideration	Rs. 48,88,386/- (as per payment plan annexed at page 46 of the complaint)



12.	Total amount paid by the complainants	Rs. 39,00,313.29/- (as per SOA dated 02.09.2019 annexed at pg. 60-62 of the reply)
13.	Payment plan	Construction Linked Plan (annexed at page 46 of the complaint)
14.	Due date of delivery of possession as per clause 32- within 36 months from the date of signing of the agreement or the date of start of construction, whichever is later.	12.10.2015 Note:- Date of start of construction is 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. 12.10.2012
15.	Offer of possession to the complainants	Not offered
16.	Specific reliefs sought	i. Direct the respondent to deliver the unit as soon as possible. ii. Direct the respondent to pay delay interest on amount paid by them.

3. As per clause 32 of the space buyer's agreement, the possession was to be handed over within a period of 36 months from the date of signing of the space buyer's agreement or the date of start of construction, whichever is later. As, the date of start of construction comes out to be 15.06.2012 and the date of execution of agreement is 12.10.2012, the due date of handing over the possession is calculated from the date of signing of the agreement which



comes out to be 12.10.2015. Clause 32 of the space buyer's agreement is reproduced below:

"32 That the Company shall give possession of the said unit 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...."

4. The possession of the subject apartment has not been offered by the respondent to the complainants so far. The complainants seeks delay interest as per section 18 of the Act. The complainants reserve their right to file a separate application for seeking compensation from the Adjudicating Officer on account of extreme delay and mental harassment caused to the complainants. Hence, this complaint for the reliefs as stated above.
5. The complainants submitted that on 14.06.2013 they took over this project from the first owner Mr. Lt. Gen. Satyavir Yadav and cleared off his payments, and the same was recorded and entered into records of the respondent company along with the endorsement sheet of the BBA.
6. The complainants submitted that the expected date of possession as per BBA was 12.10.2015 which the respondent had failed to deliver and is running late by approx.. 43 months on the date 10.05.2019.
7. On the date of hearing, the Authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.



8. The respondent contended on following grounds:-
- a. The respondent submitted that the complainant is attempting to raise issues now, at a belated stage, attempting to seek a modification of the agreement entered into between the parties in order to acquire benefits for which the complainant is not entitled in the least.
 - b. The respondent submitted that the issue so raised in this complaint are not only baseless but also demonstrates an attempt to arm twist the answering 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.
 - c. The respondent submitted that one of the major reason for the delay was because of the non-completion of Dwarka expressway which is a part of master plan 2031.
 - d. The respondent submitted that on 19th February 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.
 - e. The respondent submitted that 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.

- f. The respondent submitted that the complainants are seeking interest for delay in delivery of possession and is also seeking a direction for waiver of the PLC charges paid and quash the demand of HVAT by the respondent.
 - g. The respondent submitted that the complainants have failed to make timely payments. It is submitted that several reminder letters dated 06.08.2012, 05.07.2012 and 31.05.2017 were sent to the complainants for their outstanding dues.
9. The respondent has filed some additional facts and documents, which are as follows:-
- a. It is submitted that 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. 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.

- b. Further reliance is made by the respondent on the judgment passed by the Hon'ble Supreme Court in the matter titled as: CCI Projects (P) Ltd. vs. Vrajendra Jogjivandas Thakkar. It is further submitted that the Government of India declared nationwide lockdown due to COVID-19 pandemic effective from 24th March, 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.

c. It is further submitted that after making sincere efforts despite the force majeure conditions, the applicant/respondent completed the construction and thereafter applied for the occupancy certificate (OC) on 15.07.2020.

10. 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.
11. The authority on the basis of information and explanation and other submissions made and the documents filed by the complainants and the respondent is of considered view that there is no need of further hearing in the complaint.
12. On consideration of the circumstances, the evidence and other record and submissions made by the complainants and the respondent and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the Authority is satisfied that the respondent is in contravention



of the provisions of the Act. By virtue of clause 32 of the space buyer's agreement executed between the parties on 12.10.2012, possession of the booked unit was to be delivered within a period of 36 months from the date of execution of space buyer's agreement or the date of start of construction, whichever is later. the date of start of construction comes out to be 15.06.2012 and the date of execution of agreement is 12.10.2012, the due date of handing over the possession is calculated from the date of signing of the agreement which comes out to be 12.10.2015. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the space buyer's agreement dated 12.10.2012 to hand over the possession within the stipulated period.


13. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondent is established. As such the complainants are entitled for delayed possession charges @9.30% p.a. from the due date of possession i.e. 12.10.2015 till actual offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
14. Hence, the authority hereby pass the following order and issue directions under section 34(f) of the Act:



- i. The respondent shall pay the interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 12.10.2015 till the actual offer of possession.
- ii. The arrears of interest accrued till date of decision shall be paid to the complainants within a period of 90 days from the date of this order and thereafter monthly payment of interest till the offer of possession shall be paid on or before 10th of each subsequent month.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent shall not charge anything from the complainants which is not part of the space buyer's agreement.
- v. Interest on the delay payments from the complainants shall be charged at the prescribed rate of interest @9.30% p.a. by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.

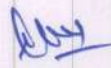
15. Complaint stands disposed of.

16. File be consigned to registry.

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(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

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(Subhash Chander Kush)

Member

Dated: 03.11.2020

Judgement Uploaded on 02.12.2020