BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 3801 of 2020
First date of hearing : 16.12.2020
Date of decision : 09.02.2021

Shri Vishal Bakshi
Resident of:- K-1466, Ansal's Palam Vihar, Gurugram-122017, Haryana **Complainant**

Versus

M/s VSR Infratech Pvt. Ltd.
Regd. Office:- A-22, Hill View Apartments, Vasant Vihar, New Delhi-110057 **Respondent**

CORAM:
Dr. K.K. Khandelwal **Chairman**
Shri Samir Kumar **Member**

APPEARANCE:
Shri Rit Arora & Shri Pawan Kumar Ray Advocates for the complainant
Ms. Shreya Takkar Advocate for the respondent

ORDER

1. The present complaint dated 25.11.2020 has been filed by the complainant/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 complainant, 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	2.968 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.	Applied for extension	06.03.2020
9.	Unit no.	G-65, Ground Floor
10.	Unit measuring (super area)	968.76 sq. ft.
11.	Allotment letter	N/A
12.	Date of execution of space buyer's agreement	12.06.2013
13.	Total sales consideration	Rs. 75,62,479/- (As per SOA dated 06.09.2019 at page 67 of the complaint)

14.	Total amount paid by the complainant	Rs. 62,80,809/- (As per SOA dated 06.09.2019 at page 67 of the complaint)
15.	Payment plan	Construction Linked Plan
16.	Date of start of construction	15.3.2012 (As per reminder 1- Annexure - 5
17.	Due date of delivery of possession ***"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. If the completion of the said Building is delayed by reason of non-availability of steel and/or cement or other building materials...."***	15.3.2012 **Note:- Date of start of construction is 01.01.2012. The due date is calculated from the date of signing of Agreement i.e. 12.6.2013 being a late date. A grace period of 6 months is also allowed to the promoter due to certain force majeure circumstances which could not be avoided by the builder.**
18.	**Offer of possession to the complainant**	Not offered
19.	Specific reliefs sought	Direct the respondent to grant an immediate possession along with payment for delay at a prescribed rate of interest.

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. Further, a grace period of 6 months is allowed by the authority for delivering the possession of the subject unit due to certain force majeure circumstances which

could not be avoided by the builder. As, the date of start of construction comes out to be 15.03.2012 and the date of execution of agreement is 12.06.2013, the due date of handing over the possession is calculated from the date of signing of the agreement which comes out to be 12.12.2016. 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 complainant so far. The complainant seeks delay interest as per section 18 of the Act. The complainant 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 complainant. Hence, this complaint for the reliefs as stated above.

5. The complainant submitted that in the month of February 2011, the complainant met the representatives of the respondent and booked a commercial retail shop in the month of February 2011 and paid a sum of Rs. 7,00,000/- through cheque no. 490069 dated 28.02.2011 drawn on Syndicate Bank. However, no allotment or any receipt was issued by the respondent to the complainant.

6. The complainant submitted that in absence of any response from the respondent, the complaint contacted the representatives of the respondent when he was asked to submit the application for

allotment of unit. The complainant then made another application bearing no. 11 dated 04.07.2011 for allotment of a commercial retail shop in the project 114 Avenue. In the said application, the respondent assured allotment of the unit no. G-65 located on ground floor having super area of 968.76 sq. ft. It is pertinent to mention that the respondent issued a receipt bearing no. 474 dated 04.07.2011 for a payment of Rs. 14,00,000/- made via cheque no. 490069 dated 28.02.2011.

7. The complainant submitted that it is pertinent to mention that prior to execution of the space buyer agreement, the respondent demanded and the complainant paid a total sum of Rs. 33,66,212/- out of total basic sale price of Rs. 67,81,320/- around 50% of the basic price. However, in the space buyer agreement, the respondent incorrectly recorded the payment before execution of agreement as Rs. 27,24,926/- instead of Rs. 33,66,212 /-.

8. The complainant submitted that he is not supposed to wait endlessly for possession of the unit. The respondent proposed to deliver the possession of the unit by 18.06.2016. However, they failed to deliver possession within the time stipulated in the agreement and even after 3 years 10 months from the promised date. The respondent failed to complete the contract even after more than 9 years. The Hon'ble Supreme Court in ***Fortune Infrastructure and Ors versus Trevor D'Lima and Ors.*** had held that a time period of 3 years is reasonable time to complete a contract. Similar view was taken by the Hon'ble Supreme Court in ***Kolkata West International City Pvt. Ltd. versus Devasis Rudra.***

9. The complainant submitted that the Hon'ble Supreme Court has in various recent judgments have held that in case of inordinate delay in handing over of the possession, the buyers cannot be compelled to take the possession and has the right to refuse the same and seek refund. The Hon'ble Supreme Court in ***Pioneer Urban Land & Infrastructure Ltd. vs Govindan Raghavan*** and ***Marvel Omega Builders Pvt. Ltd. and Anr. Vs. Shrihari Gokhale and Anr.*** held that in case of inordinate delay in delivery of possession, a buyer cannot be forced to take possession and has the right to refuse possession and seek refund of the total amount paid to the builder.

10. 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.

11. 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 buyers agreement was entered into between the parties and, as such, the parties were bound by the terms and conditions mentioned in the said agreement.

g. The respondent submitted that it is trite law that the terms of the agreement are binding between the parties. The Hon'ble Supreme Court in the case of ***"Bharti Knitting Co. vs. DHL Worldwide Courier (1996) 4 SCC 704"*** observed that a person

who signs a document containing contractual terms is normally bound by them even though he has not read them, and even though he is ignorant of their precise legal effect. It is seen that when a person signs a document which contains certain contractual terms, then normally parties are bound by such contract; it is for the party to establish exception in a suit. When a parties to the contract disputes the binding nature of the singed document, it is for him or her to prove the terms in the contract or circumstances in which he or she came to sign the documents.

h. The respondent submitted that the Hon'ble Supreme Court in the case of ***"Bihar State Electricity Board, Patna and Ors. Vs. Green Rubber Industries and Ors, AIR (1990) SC 699"*** held that the contract, which frequently contains many conditions, is presented for acceptance and is not open to discussion. It is settled law that a person who signs a document which contains contractual terms is normally bound by them even though he has not read them, even though he is ignorant of the precise legal effect.

i. The respondent submitted that it is settled law as held by the Hon'ble Supreme Court in ***S.P. Chengalvaraya Naidu v. Jagannath 1994(1)SCC(1)*** that non-disclosure of material facts and documents amounts to a fraud on not only the Opposite Parties but also on the Court. Reference may also be made to the decisions of the Hon'ble Supreme Court in ***Dilip Singh Vs State of UP 2010-2-SCC-114 and Amar Singh Vs***

Union of India 2011-7-SCC-69 which is also been followed by the Hon'ble National Commission in the case of ***Tata Motors Vs Baba Huzoor Maharaj being RP No. 2562 of 2012*** decided on 25.09.2013.

12. 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.

13. The Authority on the basis of information and explanation and other submissions made and the documents filed by the complainant and the respondent is of considered view that there is no need of further hearing in the complaint.

14. On consideration of the circumstances, the evidence and other record and submissions made by the complainant and the respondent and based on the findings of the authority regarding contravention as per provisions of the Act, 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 12.06.2013, 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. Further, a grace period of 6 months is allowed by the authority for delivering the possession of the subject unit due to certain force majeure circumstances which could not be avoided by the builder. The date of start of

construction comes out to be 15.03.2012 and the date of execution of agreement is 12.06.2013, the due date of handing over the possession is calculated from the date of signing of the agreement which comes out to be 12.12.2016. But as the respondent has failed to handover the possession to the complainant till now.

15. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the space buyer's agreement dated 12.06.2013 to hand over the possession within the stipulated period. 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 complainant is entitled for delayed possession charges @9.30% p.a. from the due date of possession i.e. 12.12.2016 till offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

16. 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 complainant from due date of possession i.e. 12.12.2016 till the offer of possession.

    ii. The arrears of interest accrued till date of decision shall be paid to the complainant 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 before 10th of every subsequent month.

iii. The respondent shall not charge anything from the complainant which is not part of the space buyer's agreement.

iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

v. Interest on the delay payments from the complainant 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 complainant in case of delayed possession charges.

17. Complaint stands disposed of.

18. File be consigned to registry.

Dr. K.K. Khandelwal
(Chairman)

(Samir Kumar)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.02.2021