

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

**Complaint no.** : 4219 of 2020  
**First date of hearing** : 09.02.2021  
**Date of decision** : 09.02.2021

Shri Pratik Ranjan

**Resident of:** - Flat No.-651, Kamal Vihar CGHS,  
Plot 5, Sector-7, Dwarka, New Delhi-110075

**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  
Shri Samir Kumar

**Chairman**  
**Member**

**APPEARANCE:**

Complainant in person  
Ms. Shreya Takkar

Advocates for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint dated 09.12.2020 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.

**A. Unit and project related details**

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/not registered	Registered vide no. 53 of 2019 dated 30.09.2019
7.	RERA registration valid upto	31.12.2019
8.	RERA extension	113 of 2020 dated 05.10.2020
9.	RERA extension valid upto	31.12.2020 (Extension validity expired)
10.	Unit no.	G-85, ground floor
11.	Unit measuring (super area)	523.13 sq. ft.
12.	Allotment letter	25.12.2011
13.	Date of execution of space buyer's agreement	10.10.2012
14.	Total sales consideration	Rs. 41,38,317.56/-

		(As per payment plan annexed with the allotment letter at page no. 45 of the complaint)
15.	Total amount paid by the complainant	Rs. 37,13,572/- (As per statement annexed at page no. 105 of the complaint)
16.	Payment plan	Construction Linked Plan
17.	Date of start of construction	01.01.2012 (As stated by the promoter in DPI)
18.	Due date of delivery of possession <i>"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...."</i>	10.04.2016  Note: - Date of start of construction is 01.01.2012 as per DPI submitted by the promoter, thus the due date is calculated from the date of signing of the agreement i.e. 10.10.2012. 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.
19.	Offer of possession to the complainant	Not offered
20.	Specific reliefs sought	Direct the respondent to grant an immediate possession along with payment for delay at a prescribed rate of interest.

### B. Fact<sup>s</sup> of the complaint

- The possession of the subject apartment has not been offered by the respondent to the complainant so far. The complainant is seeking delay interest as per section 18 of the Act. The complainant reserves his 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.

4. The complainant submitted that the building plan for the said project was sanctioned vide license No. 72 of 2011 dated 20.07.2011. The allotment was done after receipt of 20%, i.e. Rs. 7,00,000/- of total cost on 25.12.2011 and excavation work was started on 19.02.2012 but respondent executed space buyer agreement after 10 months of allotment i.e. on 10.10.2012 that also after receipt of 30%, i.e. Rs. 10,59,250/- of the cost, the respondent delayed in execution of space buyer agreement for 11 months best known to them.
5. The complainant submitted that he has applied for a non-residential property loan from ICICI Bank Ltd., amounting to Rs.20.42 lac on an interest of 13 % per annum as per their letter dated 19.08.2013 and 20.09.2013, for which respondent has issued a permission letter to mortgage the booked shop for availing the loan vide their letter dated 20.09.2013.
6. The complainant submitted that as there was a delay of three years, in possession and complainant was paying heavy interest on the non-residential loan taken from ICICI Bank, Gurugram for the payment against booked shop, complainant requested respondent vide his letter dated 07.07.2017 for the payment of interest on his entire deposit @ 18% per annum, which respondent has charged on their dues from the complainant.

7. The complainant submitted that the respondent sent a mail on 01.11.2018 demanding Rs. 3,60,226/- (85% the total cost) with an intimation that the possession of shop will be given by March 2019, relying on their written commitment the complainant paid Rs. 3,60,226/- vide ICICI bank cheque no. 008023 dated 02.11.2018, which was acknowledged by the respondent vide their receipt no: R000558 dated 02.11.2018.
8. The complainant submitted that the respondent again sent 2nd mail on 22nd March 2019 informing that now the possession will be given by September 2019 also informed that in case of failure by this time both parties (buyer and developer) will abide by all rules and regulations of RERA and DTCP (Chandigarh, Haryana).
9. The complainant submitted that the respondent sent 3rd mail on 8th July demanding Rs. 3,60,226/- (90% of the total cost), again sent 4th mail on 9th July 2019 with new date of possession as December 2019, (3rd date) mentioning that in case of failure by this time the developer will pay penalty as per HRERA (Gurugram) norms. Again relying on third new date of possession, the complainant paid Rs 3,60,226/- on 9th July 2019 by ICICI cheque no: 8027 dated 09.07.2019, which was credited in respondents bank account on 10th July 2019.
10. The complainant submitted that since the respondent has failed to offer possession of the shop with completion and occupancy certification even after delay of more than 6 years, since date of agreed possession stipulated in the agreement, the complainant served a letter dated 18.08.2020 on the respondent, requesting

payment for delayed penalty (interest) on the entire amount deposited by him to the respondent against cost of the shop in question along with interest @ 18% thereon. This letter was sent through speed post-dated 21.08.2020, which was delivered in the office of the respondent on 23.08.2020, but no reply was received from the respondent.

11. The complainant submitted that he has deposited 90% of the total cost amounting to Rs. 37,13,572/- till now but still the respondent has failed to deliver the possession of the shop to him.

**C. Relief sought by the complainant:**

12. The complainant has sought following relief(s).
  - (i) The complainant was continuing with the project, but request for the payment of delay penalty charges and the interest @18% per annum on total amount paid of Rs. 37,13,572/- thereon compounded on monthly basis as charged by the respondent on delayed from the date of deposit till the date of actual offer of possession, in view of the provisions contained under section 18(1) of the Real Estate (Regulation and Development) Act, 2016.
13. 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.



14. Notice to the promoter/respondent through speed post as well as E-mail ([info@vsrinfratech.com](mailto:info@vsrinfratech.com)) was sent. The delivery report of notices shows that delivery was completed. Despite service of notice, the promoter/respondent has failed to file reply. However, the promoter/respondent was represented through his advocate who marked attendance on the date of hearing i.e. 09.02.2021.
15. 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.
16. 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.

**D. Findings on the relief sought by the complainant**

**Relief sought by the complainant:** The complainant was continuing with the project, but request for the payment of delay penalty charges and the interest @18% per annum on total amount paid of Rs. 37,13,572/- thereon compounded on monthly basis as charged by the respondent on delayed from the date of deposit till the date of actual offer of possession, in view of the provisions contained under section 18(1) of the Real Estate (Regulation and Development) Act, 2016.

17. 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."*

18. 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 01.01.2012 and the date of execution of agreement is 10.10.2012, the due date of handing over the possession is calculated from the date of signing of the agreement which comes out to be 10.10.2016. 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...."*

19. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the rate of 18% p.a. however, however, proviso to 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 the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

**Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]**

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

20. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases. The Haryana Real Estate Appellate Tribunal in **Emaar MGF Land Ltd. vs. Simmi Sikka (Supra)** observed as under: -

64. Taking the case from another angle, the allottee was only entitled to the delayed possession charges/interest only at the rate of Rs.15/- per sq. ft. per month as per clause 18 of the Buyer's Agreement for the period of such delay; whereas, the promoter was entitled to interest @ 24% per annum compounded at the time of every succeeding instalment for the delayed payments. The functions of the Authority/Tribunal are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the home buyers. This Tribunal is duty bound to take into consideration the legislative intent i.e., to protect the interest

*of the consumers/allottees in the real estate sector. The clauses of the Buyer's Agreement entered into between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the Buyer's Agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the Buyer's Agreement dated 09.05.2014 are ex-facie one-sided, unfair and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These types of discriminatory terms and conditions of the Buyer's Agreement will not be final and binding."*

21. 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 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 10.10.2012, 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. 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 01.01.2012 and the date of execution of agreement is 10.10.2012, the due date of handing over the possession is calculated from the date of signing of the agreement which comes out to be 10.10.2016. But as the respondent has failed to handover the possession to the complainant till now.

22. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the space buyer's agreement dated 10.10.2012 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. 10.04.2016 till offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

**E. Directions of the authority**

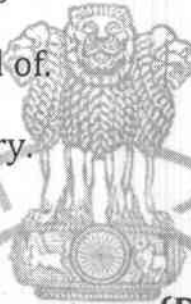
23. Hence, the authority hereby passes the following order and issue directions under section 34(f) of the Act:

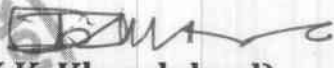
- i. The respondent shall pay the interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 10.04.2016 till the offer of possession.
- ii. The arrears of interest accrued till date of decision shall be paid to 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 10<sup>th</sup> 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 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 complainant in case of delayed possession charges.
24. Complaint stands disposed of.
25. File be consigned to registry.

  
**(Samir Kumar)**  
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

  
सत्यमेव जयते

  
**(Dr. K.K. Khandelwal)**  
(Chairman)

Dated: 09.02.2021

Judgement uploaded on 05.07.2021

**HARERA**  
**GURUGRAM**