BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 4540 of 2020
First date of hearing : 09.02.2021
Date of decision : 09.02.2021

Shri Rahul 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 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.	F-75, 1st Floor
11.	Unit measuring (super area)	597.94 sq. ft.
12.	Allotment letter	N/A
13.	Date of execution of space buyer's agreement	18.06.2013

14.	Total sales consideration	Rs. 40,39,233.69/- (As per SOA at page no. 64 of the complaint)
15.	Total amount paid by the complainant	Rs. 33,61,170/- (As per statement annexed at page no. 64 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 ***"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...."***	18.12.2016 **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. 18.06.2013. 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 of the complainant

3. The complainant submitted that in the month of April 2011, the complainant met the representatives of the respondent and booked a commercial retail shop in the month of April

2011 and paid a sum of Rs. 6,00,000/- through cheque no. 517275 dated 29.04.2011 drawn on Syndicate Bank. However, no allotment or any receipt was issued by the respondent to the complainant.

4. 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. 54 dated 06.07.2011 for allotment of a commercial retail shop in the project 114 Avenue. In the said application, the respondent assured allotment of the unit no. F-72 located on first floor having super area of 699.34 sq. ft. It is pertinent to mention that the respondent issued a receipt bearing no. 509 dated 06.07.2011 for a payment of Rs. 6,00,000/- made via cheque no. 517275 dated 29.04.2011.

5. 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. 12,35,836/- out of total basic sale price of Rs. 40,16,040/- around 30% of the basic price. The respondent also acknowledged the receipt of Rs. 12,35,836/- in the agreement dated 18.06.2013.

6. 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.***

7. 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.

C. **Relief sought by the complainant**

8. The complainant has sought following relief(s).

   (i) Direct the respondent company to handover the possession of the unit complete in all respect to the satisfaction of the complainant along with delay interest @18% per annum on the paid amount from the date of payment till actual realization.

9. 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.

10. Notice to the promoter/respondent through speed post as well as E-mail (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.

11. 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.

12. 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: Direct the respondent company to handover the possession of the unit complete in all respect to the satisfaction of the complainant along with delay interest @18% per annum on the paid amount from the date of payment till actual realization.

13. 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."*

14. 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...."*

15. **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.

16. 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 homer 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."

17. 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 18.06.2013, 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 01.01.2012 and the date of execution of agreement is 18.06.2013, the due date of handing over the possession is calculated from the date of signing of the agreement which comes out to be 18.12.2016. But as the respondent has failed to handover the possession to the complainant till now.

18. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the space buyer's agreement dated 18.06.2013 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. 18.12.2016 till offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

19. 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. 18.12.2016 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 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.

20. Complaint stands disposed of.

21. File be consigned to registry.

Dr. K.K. Khandelwal (Chairman)
Haryana Real Estate Regulatory Authority, Gurugram

(Samir Kumar) Member

Dated: 09.02.2021

Judgement uploaded on 10.07.2021