

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

Complaint no. : 4328 of 2020
First date of hearing : 09.02.2021
Date of decision : 09.02.2021

Shri Narendra Kumar Juneja
Resident of: - WZ-1079A, 2nd floor, Opp.
Anokha Saree, Main Market, Rani Bagh, Delhi-
110034

Complainant

Versus

M/s VSR Infratech Pvt. Ltd.
Regd. Office: - Plot No. 14, Ground Floor,
Sector-44, Institutional Area, Gurugram-
122003

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri Vikas Chhabra
Ms. Shreya Takkar

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 16.12.2020 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.	3A-19, 3rd Floor
11.	Unit measuring (super area)	500.88 sq. ft.
12.	Allotment letter	10.12.2011
13.	Date of execution of space buyer's agreement	17.05.2012

14.	Total sales consideration	Rs. 26,95,481.46/- (As per payment plan at page no. 18 of the complaint)
15.	Total amount paid by the complainant	Rs. 18,64,636/- (As per demand letter 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 <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>	17.11.2015 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. 17.05.2012. 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 of the complaint

3. The complainant submitted that the respondent as per the plan started construction in March 2012 but however as per the agreement with the complainant, the respondent was required to handover the possession by 17, May 2015 i.e. after



6 months from the date of the signing of agreement. That after the said agreement the complainant made the payment to the respondent as per the payment plan as and when the demand was raised. In 2013, September, the complainant who was short of funds managed loan from M/s ICICI Bank and in this regard permission to mortgage was given by the respondent vide letter dated 24.09.2013.

4. The complainant submitted that in April 2014 the construction activity at the project was stopped for the reason completely unknown to the complainant till date and consequently possession was delayed without any reason which was promised by 17.05.2015. However, till 21.08.2014, the applicant had already made the payment of Rs. 18,64,538/-.
5. The complainant submitted that there was no construction between 2014 to 2017 can be judged from the fact that the complainant made the next demand after August 2014 in May 2017 to the complete prejudice of the allottees whose funds were already blocked in the said project. Thus till August 2014 the complainant had made around 73% of the total cost.
6. The complainant submitted that @ 18% p.a. compounded annually the complainant is entitled for the interest of Rs. 18,16,009/- from 17.05.2015, till date and after deducting the demand of Rs. 7,03,042/- due to the respondent the

complainant is entitled to receive the amount of Rs. 11,12,967/- from the respondent.

C. Relief sought by the complainant:

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

- (i) Direct the respondent to pay interest for the delayed period of possession on the amount already accepted towards the cost of aforesaid commercial unit to the complainant @18% or such alternative rate of interest which this authority thinks reasonable to compensate the complainant due to delay caused by the respondent in giving the possession; and further direct the respondent to adjust the aforesaid amount of interest against the due to the respondent towards the remaining cost of the said commercial unit;
- (ii) Declare the interest charged by the respondent upon the installments due from the complainant after the delay possession as null and void.

8. 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.

9. 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.

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 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 to pay interest for the delayed period of possession on the amount already accepted towards the cost of aforesaid commercial unit to the complainant @18% or such alternative rate of interest which this authority thinks reasonable to compensate the complainant due to delay caused by the respondent in giving the possession; and further direct the respondent to adjust the aforesaid amount of interest against the due to the respondent towards the remaining cost of the said commercial unit

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. 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...."

14. **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.

15. 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."

16. 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 17.05.2012, 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 17.05.2012, the due date of handing over the possession is calculated from the date of signing of the agreement which comes out to be 17.11.2015. But as the respondent has failed to handover the possession to the complainant till now.

17. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the space buyer's agreement dated 17.05.2012 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. 17.11.2015 till offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

18. 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. 17.11.2015 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.
19. Complaint stands disposed of.
20. File be consigned to registry.


(Samir Kumar)
(Member)

Haryana Real Estate Regulatory Authority, Gurugram


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

Dated: 09.02.2021

Judgement uploaded on 10.07.2021