

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

Complaint no. : 4353 of 2019
First date of hearing : 06.12.2019
Date of decision : 09.02.2021

1. Shri Ashwani Kumar Arora
Resident of: - House No. 213, Kohat Enclave,
Pitampura, New Delhi-110034

2. Shri Surender Monga
Resident of: - House No. 2240, Raja Park,
Ranibagh, New Delhi-110034

Complainants

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:

Shri Rit Arora

Shri Pawan Kumar Ray

Ms. Shreya Takkar

Advocates for the complainants

Advocate for the respondent

ORDER

1. The present complaint dated 20.09.2019 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.

A. Unit and project related details

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	2.968 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-34, First Floor
11.	Unit measuring (super area)	637.41 sq. ft.
12.	Allotment letter	10.01.2012



		(Page no. 29 of the complaint)
13.	Date of execution of space buyer's agreement	20.10.2012
14.	Date of execution of agreement to sell between first owner and the complainant	20.11.2012
15.	Total sales consideration	Rs. 47,40,204/- (as per payment plan annexed at page 31 of the complaint)
16.	Total amount paid by the complainants	Rs. 54,12,627/- (as per agreement to sell at page 60 and receipts attached at page 64-81 of the complaint)
17.	Payment plan	Construction Linked Plan (annexed at page 31 of the complaint)
18.	Date of start of construction	01.01.2012 (As stated by the promoter in DPI)
19.	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>	20.04.2016 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. 20.10.2012. 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.
20.	Offer of possession to the complainants	Not offered
21.	Specific reliefs sought	Direct the respondent to grant an immediate possession along



		with payment for delay at a prescribed rate of interest.
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B. Fact of the complaint

3. The complainants submitted that the said project of the respondent company is a commercial project and has been propagated by the respondent company as an apt project for the commercial investments of its customers. That the complainants were lured by such highlights of the respondent company and therefore proceeded to get an allotment of a commercial unit in the project of the respondent company. Some of the highlight of the project included: - (a). located in 100% commercial zone; (b). 3 side open plot, one side facing existing Nazafgarh – Gurugram highway, one side facing 60-meter upcoming sector road complemented by 12-meter service land and one side facing the revenue road of Delhi; (c). within proximity to almost all transport facilities. (d). vibrant and beautifully landscaped open spaces; (e). congestion free and peaceful environment augmented by the panoramic view, terrace gardens and water bodies; (f). each block with separate lobby and entrance congregating on to the center of the site; (g). state-of-the-art building management systems; (h). ample parking space.

4. That these were only among the few lucrative and alluring features of the project highlighted by the respondent company in their brochure. Apart from these, the respondent company had also assured its customers of the timely and satisfactory delivery of the possession of the unit within a reasonable time period of around 3 years.
5. The complainants submitted that one Mr. Anand Kumar made an application with the respondent company on 25.07.2011 for booking of a commercial unit in the project of the respondent company and deposited an amount of Rs. 6,50,000/- towards the booking.
6. The complainants submitted that an agreement to sell was executed between the former allottee and them on 20.11.2012 by which the former allottee sold his unit to them. A sum of Rs. 5,00,000/- was initially paid to the former allottee by them and the rest of the amount of Rs. 11,57,000/- was to be paid to the former allottee by 15.02.2013.
7. The complainants submitted that the balance amount for the unit was to be paid directly to the respondent company by them which comes to be around Rs. 28,46,657/- as per the agreement.
8. That the complainants kept on getting reminders from the respondent without getting any information from the due date

of possession or the date of completion of the project. That the complainants wrote a mail to the respondent company putting forth several queries to them regarding the project and the date of possession and the reason for delay. That the complainants also asked about the process and the compensation which was to be paid for the extraordinary delay.

9. The complainants further submitted that the respondent gave a very unsatisfactory reply to the complainants vide mail dated 30.06.2017. That the respondent blamed the delay in possession exclusively on the dues of the other allottees which were awaited by them, the project was promised to be delivered within 15-18 months and no specific compensation was given for the delay which had been caused till date. That the reply was very vague unsatisfactory and did not dwell any details. It is surprising to note that a copy of the sanction plan was also not supplied to the complainants, terming it as a confidential document. That such a reply is nothing but a very vague image of the factual matrix which had been given by the respondents.

C. Relief sought by the complainants:

10. The complainants have sought following relief(s).

- (i) Direct the respondent to grant immediate possession of the unit bearing no. F-34 to the complainants along with payment dish for delay at a prescribed rate of interest;

11. 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.

D. Reply by the respondent

12. 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 reasons 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 buyer's agreement was entered into between the original allottee and the respondent company on 20.10.2012 and, as such, the parties were bound by the terms and conditions mentioned in the said agreement. The complainants are subsequent purchasers who purchased the said unit on 20.11.2012 from the original allottee. The agreement to sell was executed between the former allottee and the complainants on 20.11.2012.
- g. The respondent submitted that the complainants has paid a sum of Rs. 5,00,000/- initially and a sum of Rs. 11,57,000/- to the former allottee and the balance amount of the unit was to

be paid directly to the promoter as per the agreement to sell dated 20.11.2012.

- h. The respondent submitted that the unit in dispute was transferred in the name of the complainants after completely understanding each and every term and condition mentioned in the space buyer's agreement as such, the complainants are bound by the terms and conditions mentioned in the space buyer's agreement. It is submitted that the complainants were neither forced nor were influenced by the respondent to sign the said agreement.
13. 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 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.

14. 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.

15. 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.

E. Findings on the relief sought by the complainants

Relief sought by the complainant: Direct the respondent to grant immediate possession of the unit bearing no. F-34 to the complainants along with payment dish for delay at a prescribed rate of interest.

16. 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."

17. 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 20.10.2012, the due date of handing over the possession is calculated from the date of signing of the agreement which comes out to be 20.04.2016. 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...."

- 18. Admissibility of delay possession charges at prescribed rate of interest:** The complainants are 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.

19. 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."

20. 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 20.10.2012, 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 20.10.2012, the due date of handing over the possession is calculated from the date of signing of the agreement which comes out to be 20.04.2016. But as the respondent has failed to handover the possession to the complainants till now.

21. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the space buyer's agreement dated 20.10.2012 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 complainants are entitled for delayed possession charges @9.30% p.a. from the due date of possession i.e. 20.04.2016 till offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

F. Directions of the authority

22. 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. 20.04.2016 till the 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 before 10th of every subsequent month.



- iii. The respondent shall not charge anything from the complainants which is not part of the space buyer's agreement.
 - iv. The complainants are 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 complainants in case of delayed possession charges.
23. Complaint stands disposed of.
24. 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