

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 03.08.2021
Complaint No.	CR/2396/2019 Case titled as Faisal Mumtaz VS Vsr Infratech Private Limited
Complainant	Faisal Mumtaz
Represented through	Shri Sukhbir Yadav Advocate
Respondent	Vsr Infratech Private Limited
Respondent Represented through	Shri Amarjeet Kumar Advocate
Last date of hearing	19.05.2021
Proceeding Recorded by	Naresh Kumari and HR Mehta

Proceedings

The counsel for the respondent has moved an application for mediation in the matter for amicable settlement alongwith a demand draft of Rs.5,000/-.

1. In view of provisions of section 25 read with section 32(g) of the Real Estate (Regulation and Development) Act, 2016. wherein the Authority is empowered to facilitate the growth and promotions of a healthy, transparent, efficient and competitive real estate sector, it is necessary to take measures to facilitate amicable conciliation of dispute between the promoters and the allottees. A representation from **VSR Infratech Private Limited** for settlement has been received. In order to save time and money, it appears to the Authority that there exist elements of settlement of dispute which may be acceptable to the parties, The Authority hereby orders mediation under section 89 Code of Civil Procedure, 1908 in cases as given in annexure A through this referral order. The details of reference are as under: -



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम हरियाणा

1.	Name of the referral forum	The Haryana Real Estate Regulatory Authority, Gurugram
2.	Complaint No.	Complaint No. 2396/2021 (Available on website i.e. www.haryanarera.gov.in)
3.	Name of the Parties	Faisal Mumtaz versus VSR Infratech Private Limited
4.	Date and year of institution of cases	Same
5.	Stage of proceedings	Reply received in some matters and replies are pending in some matters
6.	Nature of dispute	Dispute between developer/builder (promoter) and customers (allottees)
7.	The statutory provision under which the reference is made	Section 89 of The Code of Civil Procedure, 1908
8.	Next date of hearing before the Authority	21.09.2021
9.	Whether the parties have consented for mediation	Specific consent was not taken and also no objections have not been received
10.	Name of the institution/mediator	Shri Rajender Kumar, Adjudicating Officer (retired Additional Session Judge and Shri Ajit Singh, Legal Officer HARERA, Gurugram One representative from promoters association (NARDECO/CREDAI) and one representative from Association of Allottees, if nominated by the respective president.
11.	To whom the case is referred for mediation	As detailed above
12.	The date and time for the parties to report before the institution/	23.08.2021 at 2.00 PM (Available on website i.e. www.haryanarera.gov.in)

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016
Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अंतर्गत गठित प्राधिकरण
भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16

	mediator	
13.	The time limit for the completion of mediation	Before 21.09.2021 .
14.	Quantum of fee/remuneration if payable	A demand draft has been received from the promoter.
15.	Contact address and telephone numbers of the parties and their Advocates	As per record

2. In terms of Section 89 of The Code of Civil Procedure, 1908 and the Judicial pronouncements, consent of the parties is not mandatory for referring a case for Mediation. The absence of consent for reference does not effect the voluntary nature of the mediation process as the parties still retain the freedom to agree or not to agree for settlement during mediation.

3. In order to prevent any misuse of the provision for mediation by causing delay in the proceedings/disposal of the case, the Authority while referring the matters for mediation, has decided to post the case for further proceedings on **21.09.2021** and hereby grant time to complete the mediation process within this reasonable time.

4. As held by the Supreme Court of India in **Afcons Infrastructure Ltd. and Anr. V. Cherian Varkey Construction Co. Pvt. Ltd. and Ors. (2010) 8 Supreme Court Cases 24**, having regard to their nature.

“All suits and cases of civil nature in particular the following categories of cases (whether pending in civil courts or other special tribunals/forums) are normally suitable for ADR processes:

(v) All cases relating to trade, commerce and contracts, including

- Disputes arising out of contracts (including all money suits);
- Disputes relating to specific performance;
- Disputes between suppliers and customers;
- Disputes between bankers and customers;

- **Disputes between developers/ builders and customers;**
- Disputes between landlords and tenants/ licensors and licensees;
- Disputes between insurer and insured.


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5. The parties were motivated to resolve their disputes through mediation. Even if the parties are not inclined to agree for mediation, the Authority has tried to ascertain the reason for such disinclination in order to persuade and motivate them for mediation. The Authority explained the concept and process of mediation and its advantages and how settlement to mediation can satisfy underlying interest of the parties.
6. The Authority hereby orders that the mediation reports be placed before the Authority for passing consequential orders. The parties are directed to remain present personally or through their authorized representative in the proceedings before the Authority.
7. If there is no settlement between the parties, the proceedings before the Authority shall continue in accordance with law. In order to ensure that the confidentiality of the mediation process is not breached, the Authority shall neither ask for the reasons for failure of the parties to arrive at a settlement, nor should the Authority allow the parties or their counsel to disclose such reasons to the Authority. However, it is open to the Authority to explore the possibility of a settlement between the parties. To protect confidentiality of the mediation process, there should not be any communication between the Authority and the mediator regarding the mediation during or after the process of mediation.
8. If the dispute has been settled in mediation, the Authority will examine whether the agreement between the parties is lawful and enforceable. If the agreement is found to be unlawful or unenforceable, it shall be brought to the notice of the parties and the Authority will desist from

acting upon such agreement. If the agreement is found to be lawful and enforceable, the Authority will act upon the terms and conditions of the agreement and pass consequential orders. To overcome any technical or procedural difficulty in implementing the settlement between the parties, it is open to the Authority to modify or amend the terms of settlement with the consent of the parties.

If the settlement is not effected between the parties, the matter shall be heard on merits on **21.09.2021**.


Samir Kumar
Member


Vijay Kumar Goyal
Member
03.08.2021