



**HARERA**  
**GURUGRAM**

HARYANA REAL ESTATE REGULATORY AUTHORITY  
GURUGRAM

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम

गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,  
HARYANA REAL ESTATE REGULATORY AUTHORITY  
GURUGRAM**

**Complaint No. : 3224/2019**  
**Date of Decision : 19.08.2021**

**Shri Deepak Chaudhary, Sunil Viswanathan  
Vindhya Vasini Battula  
R/o Flat No.49/402. Seawoods NRI Complex  
Sector -58, Nerul West, Navi Mumbai**

**Complainants**

**V/s**

**M/s VSR Infratech Pvt Ltd.  
A-22, Hill View Apartments  
Vasant Vihar  
New Delhi-110057**

**Respondent**

**Complaint under Section 31  
of the Real Estate(Regulation  
and Development) Act, 2016**

**Present:**

**For Complainants:  
For Respondent:**

**Mr. Sukhbir Yadav, Advocate  
Ms Shriya Takkar, Advocate**

**ORDER**

This is a complaint filed by Shri Deepak Chaudhary, Sunil Viswanathan and Vindhya Vasini Battula (hereinafter referred as buyers) under Section 31 of the Real Estate(Regulation and Development) Act, 2016 (in brief Act

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of 2016) read with Rule 29 of The Haryana Real Estate(Regulation and Development) Rules, 2017 (in brief 'Rules') against respondent M/s VSR Infratech Pvt Ltd.( also called as promoter) seeking directions to the respondent/promoter to refund a sum of Rs.37,86,943/- alongwith prescribed rate of interest from the date(s) of payment till its realisation.

2. According to complainants/buyers, on 25.11.2011, they booked a ~~service apartment~~ <sup>unit</sup> bearing No.GB-23, in project known as "68-Avenue" situated in Sector 68, Gurugram being developed by the respondent, by paying Rs.5,00,000/-. They were regularly making payment as per demand of respondent from time to time. A Builder Buyer's Agreement (BBA), also called as Space Buyer's Agreement(SBA) was executed on 05.02.2013. As per clause 31 of BBA/SBA, the respondent was obliged to offer possession of the booked unit within a period of 36 months from the date of approval of building plans with grace period of three months. Despite making regular payments towards the booked unit and even after lapse of five years, respondent has failed to offer possession of allotted unit. Despite having visited the project site several times to check the status of project and enquiring about the progress of the project and even writing letters/sending emails, the respondent failed to provide status report or the likely date of completion of the project/unit.

3. <sup>of complainant's case</sup> Brief facts in tabular form are reproduced as under:

Project related details		
I.	Name of the project	"68 AVENUE"
II.	Location of the project	Sector 68, Gurugram
III.	Nature of the project	Commercial

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<b>Unit related details</b>		
IV.	Unit No. / Plot No.	GB-23 <del>Service Appt.</del>
V.	Tower No. / Block No.	B
VI	Size of the unit (super area)	Measuring 547.030 sq ft
VII	Size of the unit (carpet area)	-DO-
VIII	Ratio of carpet area and super area	-DO-
IX	Category of the unit/ plot	Commercial
X	Date of booking(original)	25.11.2011
XI	Date of Allotment(original)	05.12.2012
XII	Date of execution of BBA/SBA (copy of BBA/SBA enclosed)	05.02.2013
XIII	Due date of possession as per BBA/SBA	Within 36 months from the date of building plans
XIV	Delay in handing over possession till date	More than 5 years
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said ABA	

### **Payment details**

XVI	Total sale consideration	Rs. 56,43,059/-
XVII	Total amount paid by the complainants	Rs.37,86,943/-

4. Respondent contested the claim of the complainants/buyers by filing written reply. It (respondent) disputed even maintainability of present complaint alleging that the Adjudicating Officer has no jurisdiction to entertain the complaint, as it (complaint) pertains to compensation and

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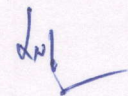


interest for grievance under section 3,7,9,10,11(4), 12,18 of the Act and the Adjudicating Officer can only deal with the complaint filed under Section 18 of the Act.

5. It is again averred by the respondent that after completing the project, it applied for grant of occupation certificate, but the same could not be granted as the Division Bench of the Hon'ble Punjab & Haryana High Court vide its order dated 09.01.2015 directed HUDA to implement the water scheme in Sectors 68 to 80, Gurugram as well as to take measures with regard to stoppage of illegal extracting of ground water. Due to said order of Hon'ble High Court, service facilities could not be completed. All this resulted in delay in getting the occupation certificate( OC). Ultimately, they got it on 02.08.2019. In this way, no fault can be attributed on the part of the respondent, for non-grant of OC. The Fire NOC of the tower was received on 07.03.2018.

6. It is clarified that construction of the project is complete and final demand letter dated 30.08.2018 was issued to the complainants urging them to pay balance dues and also to take possession of their booked unit.

7. It is further the plea of respondent that though the respondent was supposed to hand over the possession within a period of 36 months from the date of the signing of agreement or within 36 months from the date of start of construction whichever is later, alongwith grace period of three months, however the same was subject to force majeure conditions. Moreover, work of laying of pipelines for supplying water in Sector 68, Gurugram is not complete. It (respondent) not only faced water scarcity in completing the project but orders of Hon'ble High Court and NGT regarding ban of construction activities in the NCR caused delay.

  
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8. So far as jurisdiction of this forum to try and entertain the present complaint is concerned, Section 31 empowers an aggrieved person to file complaint with the authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or rules and regulations made thereunder, against any promoter/allottee or real estate agent as the case may be. Section 18 mandates refund of the amount alongwith interest at such rate as may be prescribed under this Act, if the promoter fails to complete the project or unable to give possession of apartment/unit etc.

- a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein ; or
- b) due to discontinuance of this business as a developer on account of suspension or revocation of the registration under this Act or for any other reasons;

9. According to section 71, Adjudicating Officer is appointed for the purpose of adjudging compensation under section 12 , 14,18 and section 19 of the Act. As complainant/buyer has sought compensation as well as refund of the amount, this forum is fully competent to try this complaint.

10. There is no denial that complainants were allotted unit in question project being developed by respondent. BBA in this case was entered between the parties on 05.02.2013. As per respondent, same was obliged to offer possession within a period of 36 months of BBA or from date of start of construction whichever is latter. There is no evidence on record as when construction work started, at the project in question. Taking the date of BBA as date of counting due date for possession, it comes to 05.05.2016 . As per respondent, same has received occupation certificate on 02.08.2019 and

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offered possession on same day. In this way, the project delayed for more than 3 years.

11. It is well settled by plethora of authorities that a buyer cannot be made to wait for possession of his/her dream home, indefinitely or for such a long period like three years. So far as plea of the respondent that construction was delayed due to force majeure conditions i.e. for not completing laying of pipelines for supply of water by the govt agencies or scarcity of water in completing the project, is concerned, all this was responsibility of respondent/developer to ensure that pipelines are laid in time. Although respondent referred orders passed by the Hon'ble High Court as well as NGT regarding ban of construction activities in NCR. No specific dates are mentioned by the respondent, when construction work remained stayed due to orders passed in this regard.

12. Respondent fails to explain delay in construction of project and also in handing over possession of unit to the complainants. In this way, the complainants are well within their right to claim refund as well as compensation. Complaint in hands is thus allowed.

13. Respondent is directed to refund amount received from complainants i.e. Rs.37,86,943/- within 90 days of this order alongwith interest @ 9.30% p.a. from dates of payments till realisation of amount. The respondent is also burdened with cost of Rs.1,00,000/- to be paid to the complainant.

14. File be consigned to the Registry.

  
**(RAJENDER KUMAR)**  
**Adjudicating Officer,**  
**Haryana Real Estate Regulatory Authority**  
**Gurugram**  
**19.08.2021**