



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. : 6061/2019
Date of Decision : 06.10.2021

Smt Tanuja Jain
K-46. Model Town, Part-II
Delhi-110009

Complainant

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 Complainant:
For Respondent:

Mr Shimpy Sharma, Advocate
Ms Shreya Takkar, Advocate

ORDER

This is a complaint filed by Smt. Tanuja Jain (hereinafter referred as buyer) under Section 31 of The Real Estate(Regulation and Development)

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Act, 2016 (in brief Act 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 developer) seeking directions to the respondent to refund a sum of Rs.50,64,917/- alongwith interest @ 18%p.a., from the date of making payments till realisation.

2. According to complainant, on 25.12.2011, she booked a commercial space bearing No. T-A/59 measuring 625 sq. ft. in project known as "68-Avenue" situated in Sector 68, Gurugram, being developed by the respondent, by paying Rs.4,00,000/-. In addition to this, she (complainant) paid Rs.4,00,000/- and Rs.50,175/- on 01.05.2012 and 24.05.2012 respectively. On receipt of these payments, the respondent allotted unit No.SA7-59 measuring 624.530 sq. ft. After that, she was regularly making payment as per demands of respondent, from time to time. A Space Buyer's Agreement (SBA), was executed between parties on 25.03.2013.

3. As per clause 31 of SBA, the respondent was obliged to offer possession of the booked unit, within a period of 36 months from the date of signing of this agreement, or from the date of start of construction, whichever is later, with grace period of three months. In this way, possession of booked unit was to be given by 24.06.2016, including grace period. The respondent has taken money till 24.11.2014 in the name of casting different slabs, whereas same (respondent) was not able to complete construction. The respondent offered possession on 30.08.2018, whereas the same was liable to offer possession by 24.06.2016.

4. Moreover, at the time of booking, a Term Sheet was shown to her, according to which, a Letter of Intent was signed between the respondent and M/s Ryal Hotels Ltd. On completion of construction/renovation and development of service apartments, the respondent was required to hand

over service apartment in fully complete state, on management contract for 15 years but no such thing happened and no information was given to her, in this regard.

5. Again, the respondent had offered a proposal to her (complainant) for signing of agreement with OYO rooms, for which she paid a sum of Rs.5,93,074/- Despite writing email on 05.06.2019 on this subject, no reply is received from the respondent. All these forced her to file this complaint, seeking directions for respondent to refund the amount paid by her, alongwith interest and legal expenses.

6. Brief facts of complainants case 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
Unit related details		
IV.	Unit No. / Plot No.	SA7-59
V.	Tower No. / Block No.	
VI	Size of the unit (super area)	Measuring 624.530 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)	25.12.2011

XI	Date of Allotment(original)	01.05.2012
XII	Date of execution of BBA/SBA (copy of BBA/SBA enclosed)	25.03.2013
XIII	Due date of possession as per BBA/SBA	Within 36 months from the date of signing of agreement or from the date of start of construction
XIV	Delay in handing over possession till date	More than 2 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.45,38,772/-
XVII	Total amount paid by the complainants	Rs.50,64,917/-

7. Respondent contested the claim of the complainant by filing written reply. It (respondent) disputed even maintainability of present complaint, alleging that the Adjudicating Officer has no jurisdiction to entertain this complaint, as it (complaint) pertains to compensation and interest for grievance under section 3,7,9,10,11(4), 12,18 of the Act. The Adjudicating Officer can deal with complaints filed under Section 18 of the Act.

8. It is averred by respondent that though the same (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, the same was subject to force majeure conditions. Work of laying of pipelines for supplying water in Sector 68, Gurugram was not complete. It

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(respondent) not only faced water scarcity in completing the project but orders of Hon'ble High Court and NGT regarding ban construction activities in the NCR, caused delay.

9. The respondent explained that after completing the project, it applied for grant of occupation certificate, but the same could not be granted as a Division Bench of the Hon'ble Punjab & Haryana High Court vide its order dated 09.01.2015 directed HUDA to implement water scheme in Sectors 68 to 80, Gurugram. HUDA was again directed to take measures with regard to stoppage of illegal extraction 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.

10. It is clarified that construction of the project is complete and final demand letter dated 30.08.2018 was issued to the complainant urging her to pay balance dues and also to take possession of her unit.

11. So far as jurisdiction of this forum to try and entertain present complaint is concerned, Section 31 of act of 2016 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.

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- 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;

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


13. There is no denial that complainant was allotted unit in question, in project being developed by respondent. SBA in this case was entered between the parties on 25.03.2013. The respondent was obliged to offer possession within a period of 36 months of SBA or from date of start of construction, whichever is latter, with grace period of three months. There is no evidence on record as when construction work was started, on the project in question. Taking the date of SBA, as date of counting and by adding three months of grace period, due date for possession, comes to 24.06.2016. Even as per respondent, same has received occupation certificate on 15.01.2019 and offered possession on same day. In this way, the project was delayed for about two and half years.

14. It is well settled by plethora of authorities that a buyer cannot be made to wait for possession of his/her dream home, indefinitely. 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, it 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.

15. Respondent failed to explain delay in construction of project and also in handing over possession of unit to the complainant. In this way, the complainant is well within her right to claim refund of amount paid by her. Complaint in hands is thus allowed. Respondent is directed to refund amount received from complainant i.e. Rs. 50,64,917/- within 90 days of this order, alongwith interest @ 9.30% p.a. from dates of payments till realisation of amount. The respondent is burdened with cost of litigation Rs.50,000/-, to be paid to the complainant.

16. File be consigned to the Registry.


(RAJENDER KUMAR)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram
06.10.2021

Judgement uploaded on 14.10.2021.