

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

Complaint no. : 2419 of 2021
First date of hearing: 03.08.2021
Date of decision : 03.08.2021

Angrezo Devi
R/o: - House No. 14, District Jail Campus,
Bhondsi, Gurugram- 122001

Complainant

Versus

VS Real Projects Private Limited.
Regd. office: - M-48, Basement Floor,
Greater Kailash- II, New Delhi- 110048
Corporate office at: - Plot No. 18, 2nd Floor,
Sector-44, Gurugram- 122003

Respondent

CORAM:

Shri Samir Kumar
Shri Vijay Kumar Goyal

Member
Member

APPEARANCE:

Sh. Sukhbir Yadav
Sh. Ishaan Dang

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 16.06.2021 has been filed by the complainant/allottee 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 under the provision of the Act or



the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of unit details, 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	"AMB Selfie Square", Sector- 37D, Gurugram
2.	Project area	3.775 acres
3.	Nature of the project	Commercial Colony
4.	DTCP license no. and validity status	14 of 2014 dated 10.06.2014 valid upto 09.06.2019
5.	Name of licensee	M/s VS Real project Private Limited
6.	RERA Registered/not registered	Registered Vide no. 57 of 2017 dated 17.08.2017 valid upto 16.08.2022
7.	Shop no.	106, first floor, [Page 37 of complaint]
8.	Unit measuring	286 sq. ft. [Super area]
9.	Date of execution of buyer's agreement	14.07.2016 [Page 35 of complaint]
10.	Date of provisional allotment letter	18.03.2015 [Page 27 of complaint]



11.	Payment plan	Construction linked payment plan. [Page 66 of complaint]
12.	Total consideration	Rs.31,00,910/- [as per applicant ledger page 70 of complaint and 57 of reply]
13.	Total amount paid by the complainant	Rs.23,40,148 /- [as per applicant ledger page 70 of complaint and 57 of reply]
14.	Due date of delivery of possession as per clause 16.1 of the buyer agreement: 36 months computed from the date of execution of buyer's agreement excluding additional grace period of 12 months, subject to force majeure clause. [Page 49 of complaint]	14.07.2020
15.	Offer of possession	Not offered
16.	Occupation certificate	Not received
17.	Delay in handing over possession till date of this order i.e., 03.08.2021	1 years and 20 days

B. Facts of the complaint

3. The complainant submitted that in the month of February 2015, she visited the Gurugram office and project site of the respondent/builder with her family members and a real estate agent. The complainant consulted the marketing staff of Builder and got information about the project. The marketing staff of the respondent gave her a brochure and pricelist and

allured her with a rosy picture of the project. The marketing staff and office bearers of the Respondent allured with the proposed specification and assured that possession of the shop will be handed over within 36 months of the booking and informed that they have all approvals.

4. That, believing on representation and assurance of respondent, the complainant Angrezo Devi, booked one shop bearing no. 106 on first floor, admeasuring 286 sq. ft. and signed a pre-printed application form. The shop was purchased under the construction linked Plan for a sale consideration of Rs. 28,70,868/-. Thereafter that on 18.03.2015, the respondent issued a provisional allotment letter in name of Angrezo Devi, conforming the allotment of shop no. 106 on the 1st floor for size admeasuring 286 sq. ft. in project "AMB Selfie Square" situated at sector 37D Gurugram.
5. That on 30.07.2015, the respondent has sent a newsletter and apprised that "the construction of Selfie Square has begun with the commencement of excavation" and shared the project site photographs and again claimed for "all approvals in place". It is pertinent to mention here that the respondent has deliberately delayed the execution of buyer's agreement to enhance the timeline of the due date of possession.

6. That after a long follow-up on 14.07.2016, a pre-printed, unilateral, arbitrary shop buyer agreement/buyer's agreement was executed inter-se between both the parties. According to clause 16.1 of the shop buyer agreement, the respondent has to give possession of the unit within 36 months computed from the date of execution of the buyer's agreement, excluding an additional grace period of 12 months. The said grace period was for the application and procurement of occupation certificate. However, the respondent failed to complete the construction before the due date of possession, and so, it is not entitled to a grace period, hence, the due date of possession was 14.07.2019.
7. That the complainant availed a Loan facility from ICICI Bank with the permission of the respondent for the payment of sale consideration. The respondent issued permission to mortgage letter in favour of ICICI Bank Ltd.
8. That the respondent kept raising the demands and the complainant kept paying the demands from her own sources or bank loan, but there were few instances where the respondent raised the demand and he had requested to the bank for the disbursement of amounts against the demand. But the bank refused to release the demand on the pretext of non-achieving the milestone as per agreed payment plan. That on

31.03.2021, the respondent raised a demand of Rs. 4,56,458/- thereafter, she had requested for the disbursement of the loan. But after the site visit, the bank refused to disburse the loan with a reason of non-achievement of the milestone as per payment plan. The respondent again raised a consolidated demand "On Commencement of 9th Floor Slab" and demanded Rs. 6,08,610/-, thereafter, more than two months of earlier demand and on the third visit by the technical team of the bank, the bank disbursed the amount.

9. That on 18.05.2021, the ICICI bank sent an email and stated "We would like to inform you that we have transferred Rs. 608610/- via Electronic Transfer to your account on 17.05.2021 on account of loan disbursement/refund of excess credit". That on the same day, the complainant sent an email to the respondent and asked it to send the payment receipt for the payment done. That on 24.05.2021, the complainant sent another email to the respondent and again asked to share the payment receipt. Thereafter as per the statement of account issued by the respondent the complainant has paid Rs.23,40,148/- i.e. 81% of the total sale consideration of the unit.
10. The complainant submitted that the facts and circumstances as enumerated above would lead to the only conclusion that



there is a deficiency of service on the part of the respondent party and as such, it is liable to be punished and compensate the complainant.

11. That due to the acts of the above and the terms and conditions of the builder buyer agreement, the complainant has been unnecessarily harassed mentally as well as financially, therefore the opposite party is liable to compensate the complainant on account of the aforesaid Acts of unfair trade practice.
12. That the cause of action for the present complaint arose in July **2016**, when a unilateral, arbitrary, and ex-facie builder buyer agreement was executed between the parties; the cause of action again arose in **July 2019**, when the respondent party failed to hand over the possession of the shop as per the buyer agreement. The cause of action again arose on various occasions, including on: - a) September 2019; b) October. 2020; c) December 2020, d) March 2021; and on many times till date, when the protests were lodged with the respondent company about its failure to deliver the project and the assurances given by it that the possession would be delivered by a certain time. The cause of action is alive and continuing and will continue to subsist till such time as this authority

restrains the respondent company by an order of injunction and/or passes the necessary orders.

C. Relief sought by the complainant:

13. The complainant has sought following relief(s):

(i) To get possession of the fully developed/constructed Shop with all amenities within 6 months of the filing of this complaint.

(ii). To get the delayed possession interest @ prescribed rate from the due date of possession till the actual date of possession (complete in all respect with all amenities after obtaining the OC).

14. 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

15. The respondent contested the complaint on the following grounds. The submissions made therein, in brief are as under:-

i. That the present complaint is not maintainable in law or on facts. It is submitted that the present complaint is not maintainable before this authority. The complainant has filed the present complaint seeking interest along with other directions. It is respectfully submitted that

complaints pertaining to refund, interest, compensation, damages etc. are to be decided by the Adjudicating Officer as per the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as “the Act” for short) read with Haryana Real Estate (Regulation and Development) Rules, 2017, (hereinafter referred to as “the Rules”) and not by the authority. The authority does not have the jurisdiction to grant the relief sought by the complainant. The present complaint is liable to be dismissed on this ground alone.

- ii. That the complainant is not an “aggrieved party” or “allottee” as defined under the Act. The complainant is an investor who had purchased the unit in question as an investment.
- iii. That the respondent had submitted an application for grant of license to Directorate of Town and Country Planning Department, Haryana, Chandigarh for development of a commercial colony over land admeasuring 30 kanal 4 Marla (3.775 Acres approximately) situated in Sector- 37D in revenue estate of village Harsaru, Gurugram. Subsequently, License bearing no. 14 dated 10.06.2014 had been issued by

Directorate of Town and Country Planning, Haryana, Chandigarh.

- iv. That building plans for the project in question had been duly approved/sanctioned by Directorate of Town and Country Planning, Haryana, Chandigarh vide memo bearing no. ZP-976/AD(RA)/2014/15562 dated 16.07.2014. Thereafter, the respondent commenced construction/development of a commercial colony under the name and style of "AMB Selfie Square on the land in question.
- v. That the complainant approached the respondent and evinced an interest to purchase a unit in the said project. It is pertinent to mention that only after being fully satisfied with regard to all aspects of the project, including but not limited to the capacity/capability of the respondent to undertake conceptualization, promotion, development and construction of the same, did the complainant took an independent and informed decision to purchase a unit in the said project.
- vi. That application form dated 21.02.2015 had been filled by the complainant. Thereafter, allotment letter dated 18.03.2015 had been issued to the complainant by the respondent with respect to the unit bearing no. 106

admeasuring 286 square feet (super area) located on the first floor of the said. The complainant had opted for a construction linked payment plan.

- vii. That buyer's agreement dated 14.07.2016 had been executed between the complainant and the respondent with respect to the said unit. The complainant had voluntarily executed the aforesaid buyer's agreement after carefully going through the terms and conditions incorporated. As per clause 16.1 of the aforesaid buyer's agreement, the respondent was liable to hand over possession of the said unit to the complainant within a period of 48 months from the date of execution of the buyer's agreement inclusive of grace period. The same was subject to force majeure conditions and timely payment of the instalments by the complainant.
- viii. That the respondent has registered the said project under the provisions of the Act and the period of registration has been granted up till 16.08.2022. In other words, the respondent is committed to completion of the project and deliver the unit in question to the complainant by August 2022, subject to force majeure conditions and timely payment of instalments and compliance of the terms and conditions of the application form and buyer's agreement

by the complainant. Therefore, even on this ground, the institution of the present complaint is highly premature and misconceived and the same is liable to be dismissed at the very threshold.

- ix. That, moreover, this authority had published circular dated 27.03.2020, wherein it had been duly mentioned that the completion date of the projects registered with this authority had been extended till 30th of June 2020. Thereafter, this authority had published order bearing no. 9/3-2020 HARERA/GGM(Admn) dated 26.05.2020 wherein it had been duly mentioned that the completion date of the projects registered with this authority would automatically stand extended by a period of 6 months on account of outbreak of Covid-19. Furthermore, it had also been stipulated in the aforesaid order that the outbreak of Coronavirus Pandemic would be considered a force majeure event and the Developers would not need to file any application regarding invocation of force majeure clause.
- x. That however, the complainant had delayed in making timely payment of the instalments on various occasions. Delayed payment charges amounting to Rs. 12,974/- had been levied upon the complainant by the respondent on

account of the defaults in making timely payment committed by the complainant. The same has been duly mentioned in interest ledger/receipt information. The updated statement of account/applicant ledger dated 28.06.2021.

16. 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 and submission made by the parties.

E. Jurisdiction of the authority

The application of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

17. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

18. The respondent has contended that the relief regarding refund and compensation are within the jurisdiction of the adjudicating officer and jurisdiction w.r.t the same does not lie with the authority. It seems that the reply given by the respondent is without going through the facts of the complaint as the same is totally out of context. The complainant has nowhere sought the relief of refund and regarding compensation part, and rather has stated that she is reserving the right for compensation and at present seeking only delayed possession charges. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in *Simmi Sikka v/s M/s EMAAR MGF Land Ltd. (complaint no. 7 of 2018)* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage. The said decision of the authority has been upheld by the Haryana Real Estate Appellate Tribunal in its judgement dated 03.11.2020, in appeal nos. 52 & 64 of 2018 titled as *Emaar MGF Land Ltd. V. Simmi Sikka and anr.*

F. Findings on the objections raised by the respondent

- F.I Objection regarding entitlement of DPC on ground of complainant being investor**

19. The respondent has taken a stand that the complainant is an the investor and not consumer, therefore, is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observed that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time, the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if it contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainant is a buyer and has paid a total price of Rs.23,40,148/- to the promoter towards purchase of a unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case



may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant is an allottee(s) as the subject unit was allotted to her by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 000600000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being investors are not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainant

Relief sought by the complainant: The respondent is directed to pay delayed possession interest at the prescribed



rate from the due date of possession till actual offer of possession.

20. In the present complaint, the complainant intend 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."

21. Clause 16.1 of the buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

"16. POSSESSION OF THE UNIT

16.1 The Company, based upon its present plans and estimates, and subject to all exceptions, proposes to handover possession of the Unit within thirty-six (36) months computed from the date of execution of Buyer's Agreement, excluding additional grace period of twelve (12) months, subject to force majeure circumstances and reasons beyond the control of the company (commitment period). In case of failure of the Allottee to make timely payments of any of the installments as per the payment plan, along with other charges and dues as per applicable or otherwise payable in accordance with the Payment Plan or as per the demands raised by the company from time to time in this respect....."

22. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession



has been subjected to force majeure circumstances and reasons beyond the control of the company and in case failure of the allottee to make timely payment of any of the installment as per payment plan along with other charges or dues as applicable or otherwise payable in accordance with payment plan. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused its dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

23. **Payment of delay possession charges at prescribed rate of interest:** 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.

24. 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."

25. Consequently, as per website of the State Bank of India i.e., the marginal cost of lending rate (in short, MCLR) as on date i.e., 03.08.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
26. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(z) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. — For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the*



date the allottee defaults in payment to the promoter till the date it is paid;"

27. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same as is being granted her in case of delayed possession charges.
28. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 16.1 of the agreement executed between the parties on 14.07.2016, the possession of the subject apartment was to be delivered within 36 months from the date of execution of this agreement plus 12 months of grace period. The authority granted the grace period of 12 months to the respondent. However, it is not entitled to any further extension of time on the basis of any ground whatsoever. Therefore, the due date of handing over possession is 14.07.2020. The respondent has failed to handover possession of the subject unit till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 14.07.2020 till the handing over of the possession, at prescribed rate i.e., **9.30** % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

H. Directions of the authority

29. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent is directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e., 14.07.2020 till the handing over possession.
 - ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;
 - iii. The arrears of such interest accrued from 14.07.2020 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay

shall be paid by the promoter to the allottee before 10th of the subsequent month as per rule 16(2) of the rules;

- iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- v. The respondent shall not charge anything from the complainant which is not the part of the buyer developer agreement. The respondent is debarred from claiming holding charges from the complainant/allottee at any point of time even after being part of buyer's agreement as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3899/2020 decided on 14.12.2020.
30. Complaint stands disposed of.
31. File be consigned to registry.


(Samir Kumar)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.08.2021

Judgement uploaded on 12.10.2021