

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

Complaint no. : 515 of 2018
Date of hearing : 11.09.2018
Date of decision : 09.01.2019

Mr. Kulbushan Raj Bali
R/o Flat no. 705-706, G- Tower, Maple
Heights, C-Block, Sushant Lok-I, Gurugram-
122009(Haryana)
Versus

...Complainant

M/s VSR Infratech Pvt. Ltd.
R/o Corporate office, Plot No.14, Ground
floor, Institutional Area, Sector-44,
Gurugram-122003(Haryana)

...Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Sushil Yadav Advocate for the complainant

Shri Amarjeet kumar Advocate for the respondent

ORDER

1. A complaint dated 09.07.2018 was filed under section 31 of the Real Estate (Regulation And Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation And Development) Rules, 2017 by the complainant Mr. Kulbushan Raj Bali, against the promoter M/s VSR Infratech Pvt. Ltd., on



account of violation of clause 32 of the builder-buyer agreement executed on 10.10.2012 for unit no. F-33 on first floor having 637.41 sq. ft. approx. in the project “114 Avenue”, Sector-114, Gurugram for not giving possession on the due date which is an obligation of the promoter under section 11 (4) (a) of the Act *ibid*.

2. Since, the builder-buyer agreement has been executed on **10.10.2012 i.e.** prior to the commencement of the Real Estate (Regulation And Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint are as under: -

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|----|----------------------------------|--|
| 1. | Name and location of the project | “114 Avenue” Sector-114 village Bajghera, District Gurugram, Haryana |
| 2. | DTCP licence | 72 dated 20.07.2011 |
| 3. | RERA registered/ unregistered | Not registered (applied) |
| 4. | Date of execution of agreement | 10.10.2012 (Page 22) |
| 5. | Plan | Construction linked plan (Page 45 schedule of payment) |
| 6. | Unit No. | F-33 on 1 st floor |
| 7. | Total Cost | Rs. 43,47,137/- plus |



| | | |
|-----|--|---|
| | | taxes (as per agreement) |
| 8. | Total amount paid by the complainant | Rs. 33,27,701/- (as alleged in complaint) |
| 9. | Percentage of consideration amount | 76 % approx. |
| 10. | Date of delivery of possession. (The demand for start of excavation was raised on 15.03.2012 but the BBA was executed on 10.10.2012 accordingly, the due date for handing over possession will be computed from 10.10.2012) | Clause 32 within 36 months of signing of this agreement or 36 months from the date of start of construction of the said building whichever is later i.e. 10.10.2015 |
| 11. | Delay of number of months/ years upto | 3 years 3 months approx... |
| 12. | Cause of delay in delivery of possession | Due to force majeure |

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. A builder buyer agreement is available on record for unit no. F-33 on first floor, according to which the possession of the aforesaid unit was to be delivered by 10.10.2015. The promoter has failed to deliver the possession of the said unit to the complainants by the due date as per builder buyer agreement dated 10.10.2012. Therefore, the promoter has not fulfilled his committed liability as on date.



5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on.... The case came up for hearing on 05.12.2018 . The reply has been filed on behalf of the respondent.

Facts of complaint

6. The complainant submitted that the respondent gave advertisement in various leading newspapers about their forthcoming project named 114 Avenue "in Sector 114, Gurgaon promising various advantages, like world class amenities close proximity to Dwarka (Delhi), large number of residential projects in close vicinity and timely completion/execution of the project etc. Further, submitted that relying on the promise and undertakings given by the respondent in the aforementioned advertisements booked a space-measuring 637.41 sq. ft. in aforesaid project of the respondent for total consideration of Rs 45,64,207/-.



7. The complainant submitted that he made a total payment of Rs. 33,27,701/- to the respondent vide different cheques on different dates. That as per space buyer's agreement, the respondent had allotted a unit bearing no. F-33 having super area of 637.41 sq. ft. to the complainant. That as per para no. 32 of the space buyer's agreement, the respondent had agreed to deliver the possession of the space by 10.10.2015 i.e. within 36 months from the signing of the agreement or from the date of start of construction whichever is later. It was reiterated that the construction had started on 15.03.2012 and the agreement was signed on 10.10.2012.
8. The complainant submitted that the first payment of Rs. 7,00,000/- was made on 17.05.2011, the respondent purposely delayed signing of the space buyer's agreement by 1 Year 5 months till it was finally signed on 10.10.2012, after lots of requests/reminders by the complainant.
9. The complainant submitted that he regularly visited the site but was surprised to see that construction work is not in progress and no one was present at the site to address the queries of the complainant. The only intention of the



respondent was to take payments but without completing the work. The total cost of the unit, as previously, was stated to be Rs. 45,64,207/-. That despite receiving approximately Rs 30,30,263/- by August 2014 and 70 % of payment against the overall projected cost of Rs. 45,64,207/- by June 2017, the completion of project is nowhere in sight and has been intentionally delayed inordinately. In fact, no construction activity at the site for years and the respondent did not even call for payments, for nearly three years, between August 2014 and June 2017. This again is indicative of the game plan of the respondent i.e. delay the project intentionally and divert the funds collected from the complainant to gainfully employ the same in his other projects In spite of repeated requests and reminders over phone calls and personal visits of the complainant, the respondent has failed to deliver the possession of the allotted unit to the complainant within stipulated period.



10. The complainant submitted that it could be seen that the construction of the project where the complainant unit was booked with a promise by the respondent to deliver the unit

by 15.03.2015 but it was not completed within time for the reasons best known to the respondent.

11. That as per clause 32 of the space buyer's agreement dated 10.10.2012, the project is delivered within 36 months and the period of delay is unjust in serious financial loss as well as the loss of opportunity to commercially exploit the sale premises. The respondent has thus intentionally exploited the complainant by not providing the possession of the unit even after a delay of almost 39 months from the agreed possession plan. Also, it could be seen here that the respondent has provide clause regarding " interest on delayed payment in the space buyer's agreement which is totally one-sided, and the respondent charges 18% per annum interest on delayed, as per the subject clause.

12. The complainant submitted that he has requested the respondent several times, by making telephonic calls, personal repeat visits to their office and through emails/letters etc, either to deliver possession of the unit in question immediately or to refund the amount along with interest @ 18% per annum on the amount deposited by the



complainant, however, the respondent has flatly refused to do so. Further, the respondent, to the contrary, has been regularly demanding and collecting the payments, over the period from 17.05.2011 to 10.05.2017; total payment accrued amounting to Rs 33,27,701/-.

13. Issues raised by the complainant

- i. Whether or not the respondent has violated the terms and conditions of the builder buyer agreement thereby not handing over the possession by due date?
- ii. Whether or not the respondent is bound to refund the amount of Rs. 33,27,701/- along with interest @ 18% per annum on compounded rate from the date of booking of flat in question till date.



14. Relief sought by the complainant

- i. Direct the respondent to refund the amount of Rs. 33,27,701/- alongwith interest @ 18 % per annum on compounded rate from the date of booking of the flat in question to till date.

Reply by the respondent

Preliminary objection

15. It is pertinent to mention that the respondent company is new company with a mission and vision to become the no.1 company and to give its customers quality construction and possession in time.
16. The respondent submitted that the present complaint is not maintainable as this hon'ble authority has no jurisdiction to entertain the present complaint. The complainant has filed in the present complaint pertains to compensation and interest under section 12, 14, 18 and 19 of the Act,2016 and required to be filed before adjudicating officer under rule 29 of the HRERA rules, 2017 read with section 31 and section 71 of the said Act and not before this authority under rule 28.



17. That in the present case the complainant, and as per the space buyer agreement dated 10.10.2012, the respondent was supposed to handover the possession within a period of 36 months from the date of signing of agreement. That despite exercising diligence and continuous pursuance of project to be completed, project of answering respondent could not be completed a prescribed for the following reasons:

- a. The company faced the problem of sub soil water which persisted for a period of 6 months and hampered excavation and construction work.
- b. That on 19.02.2013 in the office of Executive Engineer, Huda Division No. II, Gurgaon had issued instruction to all developers lift tertiary treated effluent for construction purpose for sewerage treatment plant Behrampur. Due to this, the company faced the problem of water supply for a period of 6 months.
- c. The company is facing the labour problem for last 3 years continuously which slowed down the overall progress of the project and in case the company remains to face this



problem in future, there is a probability of further delay of project.

- d. The contractor of the project stopped working due to his own problems and the progress of project was completely at half due to stoppage of work at site.
- e. The typical design of fifth floor slab casting took a period of more than 6 month to design the shutting plans by structural engineer which hampered the overall progress of work.
- f. That so far as the present complainant is considered, his unit ought to have been cancelled on account of huge default, which the respondent has not done till date.
18. That it is future submitted that the complainant is attempting to raise issues now, at a belated stage, in order to seek a modification of the agreement entered between the parties with the intention to acquire benefits for which the complainants are not entitled in the least.
19. That the respondent is covered under the definition of ongoing projects and is partly registered with this hon'ble regulatory authority and complaint, if any is still required to



be filed before the adjudicating officer under rule 29 of the said rules.

20. That the respondent submitted that RERA has been enacted for effective consumer protection and to protect the interest of consumers in the real estate sector. RERA has not been enacted to protect the interest of investors.

21. That the answering respondent could not be completed the said project as prescribed for the following reasons:-

- i. That on 19.02.2018 in the office of Executive Engineer, Huda Division No. II, Gurgaon had issued instruction to all developers lift tertiary treated effluent for construction purpose for sewerage treatment plant Behrampur. Due to this, the company faced the problem of water supply for a period of 6 months.
- ii. Time and again various orders were passed by the NGT staying the construction.
- iii. Orders passed by the hon'ble high court of Punjab and Haryana where in the hon'ble court has restricted use of ground water in construction activity.
- iv. There was lot of delay on part of government agencies in providing relevant permission, licenses approval and sanctions for the project.



22. The respondent submitted that he has acted in accordance with the terms and conditions of the space buyer's agreement. It is further submitted that the applicant was duly informed about the schedule of possession as per clauses 32 of the space buyers agreement entered into between the complainant and respondent.

23. The respondent also submitted that the parties are bound by the terms and conditions mentioned in the builder buyer agreement and the Hon'ble Supreme Court in the case of **Bihar State Electricity Board, Patna and Others v. Green Rubber Industries and Others [AIR (190) SC 699]** held that the contract which frequently contains many conditions is presented for acceptance and is not open to discussion, it is settled law that a person who signs a document which contractual terms is normally bound by them even though he has not read them and he is ignorant of the precise legal effect.

24. The respondent submitted that the price of the property is Rs. 43,47,137/- plus taxes, levies and duties. Also, submitted that the complainant opted for the construction linked



payment plan and all the demands have been raised for the terms of the space buyers agreement and the payment plan opted by the complainant. Further, submitted that the amount paid by the complainant till date is Rs. 33,27,701/-. However, it is submitted that the complainant defaulted in making timely payments and therefore is liable to pay interest on delayed payments.

25. Respondent submitted that the space buyer agreement was signed between the parties on 10.10.2012 and as per the terms and conditions of the said agreement, the respondent was supposed to handover the possession within a period of 36 months from the date of the signing of agreement i.e. on or before 10.10.2015. Further, submitted that the project was delayed due to the majeure conditions beyond the control of the respondent. It is further submitted that as per clause 32 of buyer's agreement clearly states that respondent shall be entitled to extension of time for delivery of the said premises if such performance is prevented or delayed due to conditions as mentioned therein.



26. Respondent submitted that the space buyer's agreement was signed between the parties on 10.01.2012 and the amount paid till then was Rs.11,76,882/-.

27. Respondent submitted that the space buyers agreement was duly signed by complainant after properly understanding of each and every clause contained in the agreement. The complainant was neither forced nor influenced by the respondent to sign the said agreement. It was complainant who after understanding the clauses signed the said agreement in his complete senses. The complainant is now trying to put pressure on the respondent with the malafide intent of extorting money from the respondent is making vague allegations. Further, submitted that the demands have been raised by the respondent as per the payment plan opted by the complainant.



Determination of issues

28. With respect to the **first issue** raised by the complainant, the due date of possession was 10.10.2015 as per clause 32 of space buyer's agreement, the possession of the unit was to be

handed over within 36 months from the signing of the agreement or 36 months from the start of construction whichever is later. In the present case, the said agreement was executed on 10.10.2012 and the demand on the start of excavation was raised on 15.03.2012. Therefore, the due date of handing over possession will be computed from 10.10.2012 being signed later. The clause regarding the possession of the said unit is reproduced below:

"32 offer of possession

...the company will, based on its present plans and estimates, contemplates to offer possession of said Unit to the Allottee within 36 months of signing of this Agreement or within 36 months form the date of start of construction of the said Building whichever is later, subject to force majeure...."

Accordingly, the due date of possession was 10.10.2015 Therefore, there is delay of 3 years 3 months in handing over the possession.

29. With respect to the **second issue** raised by the complainant, Counsel for the respondent has stated at bar that they will hand over the possession of the shop in a fully operational complex latest by 31.12.2019. Complainant has already paid Rs.33,27,701/- to the respondent against a total sale consideration of Rs.43,47,137/-. As such, complainant is entitled for delayed possession charges at prescribed rate of



interest i.e. 10.75% per annum w.e.f 10.10.2015 till handing over the possession as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016.

Findings of authority

29. The preliminary objections raised by the respondent for regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage. 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.



Decision and directions of the authority

30. After taking into consideration all the material facts as adduced and produced by both the parties, the authority

exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent in the interest of justice and fair play:

- (i) As per clause 32 of the builder buyer agreement dated 10.10.2012, for unit no. F-33, 1st floor in project "114 Avenue", Sector 114, village Bajghera, District Gurugram possession was to be handed over to the complainant within a period of 36 months which comes out to be 10.10.2015. It was a construction linked plan. However, respondent has not delivered the unit in time. Counsel for the respondent has stated at bar that they will hand over the possession of the unit (shop) in the fully operational complex by 31.12.2019. Complainant has already paid Rs.33,27,701/- to the respondent against a total sale consideration of Rs.43,47,137/-. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 10.10.2015 till handing



over the possession as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 and if on 31.12.2019 the respondent fails to handover the possession, the complainant will be entitled to get the refund of entire amount paid by him with prescribed rate of interest.

- (ii) The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10th of subsequent month.
- (iii) If the complainant intends to get the amount adjusted on account of delayed possession charges then the respondent is directed to adjust the delayed interest charges against future demands.
- (iv) If the builder fails to hand over the possession of the shop in a fully operational complex by 31.12.2019, in that case, the complainant can seek refund of the



deposited amount along with prescribed rate of interest i.e. 10.75% per annum.

31. The order is pronounced.

32. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.01.2019

Judgement uploaded on 13.03.2019

HARERA
GURUGRAM

