

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

Complaint No. : 1069of 2018
First date of hearing: 22.01.2019
Date of Decision : 28.02.2019

Mr.Vijay Sagar,
R/o. Flat no-238, Gangotri apartment, Pocket-1,
Sector-12, Dwarka, New Delhi-110075

Complainant

Versus

M/s VSR Infratech Pvt. Ltd.
Regd. office: A-22, Hill View Apartment,
Vasant Vihar, New Delhi-110057

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Sukhbir Yadav and Mr. Abhinav Sharma
Advocates for the complainant
Mr. Amarjeet Kumar and Ms. Shriya Takkar
Advocates for the respondent

ORDER

1. A complaint dated 26.09.2018 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. Vijay Sagar, against the promoter M/s VSR Infratech Pvt. Ltd in



respect of apartment/unit described below in the project '68 Avenue', Sector-68, Gurugram on account of violation of the section 11(4)(a) of the Act ibid for not developing the project within stipulated period.

2. Since, the space buyer agreement has been executed on 25.06.2013 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 case are as under: -

1.	Name and location of the project	"68 Avenue", Sector-68, Gurugram
2.	Project area	3.231 acres
3.	Nature of real estate project	Commercial Colony
4.	RERA registered/ not registered.	Registered
5.	RERA registration no.	119 of 2017 dated 28.08.2017
6.	Revised Date of completion	30.06.2018 Already lapsed
7.	DTCP License No.	04 of 2012 dated 23.01.2012
8.	Plot/unit no.	Ga-14, tower A, ground floor
9.	Unit area admeasuring	249.290 sq.ft.
10.	Date of space buyer agreement	25.06.2013
11.	Total sales consideration as per agreement	Rs. 26,78,821/-



12.	Total amount paid by the complainant till date, as per page 93	Rs. 25,30,021/-
13.	Payment Plan	Construction Linked Payment Plan
14.	Date of delivery of possession Clause 31- 36 months plus 3 months grace period from the execution of the agreement or 36 months from the date of start of start of construction, whichever is later. Date of start of construction - 26.07.2012	25.09.2016 Note: Due date of possession calculated from date of execution of agreement, since the date of start of construction is 26.07.2012
15.	Penalty clause as per space buyer agreement	No penalty clause given in the agreement

4. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainant and the respondent. A space buyer's agreement dated 25.06.2013 is available on record for the aforesaid plot. 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 appearance. the respondent appeared on 22.01.2019. The case came up for the hearing on 22.01.2019 and 28.02.2019. The reply was filed by the respondent which has been perused by the authority.



Facts of the complaint

6. Briefly stated, the facts of the case of the complaint that the complainant along with his family members and friends visited the site. The local representative of developer allured the complainant with brochure and special characteristics of project and assured that project will be handover within 36 months from date of booking.
7. The complainant booked a shop admeasuring 249 sq. ft. in project 68 Avenue on date 30.12.2011 and paid Rs.5,00,000/- booking amount along with application form.
8. On 06.02.2013 respondent sent an allotment letter of commercial unit no. GA-14 in 68 Avenue in Sector -68, Gurugram.
9. On 25.06.2013, a pre-printed, arbitrary, one sided and unilateral shop buyer agreement was executed between complainant and respondent after a long follow-up. The agreement was executed after 18 months of booking date.
10. The complainant observed that there is no progress in construction of shop for a long time, where he raised his



grievance to respondent. Though the complainant was always ready and willing to pay the remaining instalments provided that there is progress in the construction of shop.

11. Since August, 2015 complainant is regularly visiting to the office of respondent as well as construction site and making efforts to get the possession of allotted shops, but all in vain, in spite of several visits by the complainant. The complainant never been able to know the actual status of construction.
12. It is pertinent to mention here that construction was commenced on 01.08.2012 and the complainant in the paid more than 95% of the actual amounts of shop and willing to pay the remaining amount, the respondent party has failed to deliver the possession of shop.
13. On 07.03.2017, complainant sent a grievance letter to respondent alleging delay in handing over the shop and asked for completion and handing over the possession of shop, compensation @ 20% p.a. for delay in handing over possession of the shop and actual area of shop.



14. The complainant again sent a grievance letter to respondent on date 12.06.2017, alleging non response on emails and letter and again asked for firm date of possession of shop.
15. On date 30.08.2018, the respondent sent possession letter with wrong information that “we are pleased to inform you that the building of the 68 Avenue, Tower -A at Sector -68, Gurugram is ready for possession and you can start the process for fit outs. You are advised to take the possession within 30 days by making the following payments...”. The respondent illegally demanded, late payment charges Rs. 41,265/-, administrative charges Rs. 15,000/-, advance maintenance charges for 18 months Rs. 50,313/-. Moreover, the respondent decreased the super area of shop from 249.29 to 232.93 sq. ft. and did not provide the detail of carpet area and loading of common area on shop.
16. The first-time cause of action for the present complaint arose in August, 2015, when the respondent party failed to handover the possession of the shop as per the buyer agreement. Further the cause of action arose in June, 2016 when the respondent party failed to handover the possession



of shop as per promise. Further the cause of action again arose on various occasions, including on: a) Nov. 2016; b) Jan. 2017; c) June, 2017, d) November, 2017; e) March. 2018, and on many time till date, when the protests were lodged with the respondent party about its failure to deliver the project and the assurances were given by them that the possession would be delivered by a certain time.

17. Issues raised by the complainant are as follow:

- i. Whether the developer has violated the terms and conditions of space buyer's agreement?
- ii. Whether complainant is entitled for refund along with compounding interest @ 24% per annum from date of booking to till the date of refund under section 18 and 19(4) of RERA, 2016.?

18. Relief sought:

The complainant is seeking the following reliefs:

- i. Direct the respondent party may kindly be directed to handover the possession of shop with occupation certificate and specifications given in FBA within three



months from filing the complaint and also direct the respondent to pay interest for every month of delay from due date of possession till the handing over of the possession under section 18 of RERA Act. and rule 15 of HARERA rules.

OR

- ii. Direct the respondent to refund the amount Rs. 25,30,021/- paid by the complainant to the respondent party as instalments towards purchase of Shop along with interest @ 24% per annum compounded from the date of deposit under section 18 & 19(4) of RERA Act.
- iii. Direct the respondent to kindly complete and seek necessary governmental clearances regarding infrastructural and other facilities including road, water, sewerage, electricity, environmental etc. before handing over the physical possession of the shops.



Respondent's reply

19. The respondent submitted that the present complaint is not maintainable in the eyes of the law as the complainant has

not approached the authority with clean hands and has not disclosed the true and material facts relevant to this case.

20. The respondent submitted that the complainant is attempting to raise issues now, at a belated stage, attempting to seek a modification of the agreement entered into between the parties in order to acquire benefits for which the complainant is not entitled in the least.

21. The respondent submitted that the complainant had wilfully agreed to the terms and conditions of the agreement and are now at a belated stage attempting to wriggle out of their obligations by filing the instant complaint before this hon'ble authority.

22. The respondent contended that the present complaint pertains to compensation and interest for a grievance under section 12, 14, 18 and 19 of the Real Estate (Regulation and Development) Act, 2016 and are required to be filed before the adjudicating officer under rule-29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 read with section 31 and section 71 of the said Act and not before the hon'ble authority under Rule-28.

23. The respondent submitted that in the present case, the complaint pertains to the alleged delay in delivery of



possession and the complainant is seeking the possession or in the alternative refund of the amount deposited. The complainant has filed the present complaint under rule-28 of the said rules and is seeking the relief of refund, interest and compensation u/s 18 of the said Act. The project of the respondent is registered with this authority, the complaint, if any, is required to be filed before the adjudicating officer under rule-29 of the said rules and not before this hon'ble authority under rule-28 as this hon'ble authority has no jurisdiction whatsoever to entertain such complaint and as such the complaint is liable to be rejected.

24. The hon'ble High Court of Bombay has in the judgment of **Lavasa Corporation vs. Jitender Jagdish Tulsiani and Anr.**(second appeal no. 9717 of 2018) has observed as under:

"65. Thus, it can be seen that the object of establishing this 'adjudicating mechanism' was to provide for speedy dispute redressal by bringing all the disputes under one umbrella. This 'redressal mechanism' is to ensure that, the consumers like the Respondents, who have invested their large amount of hard-earned money in the real estate projects, should get its returns at the earliest, either in the form of completion of the projects and possession of the apartments, or, by way of compensation with interests. If the Respondents, who have invested such money, are not allowed to approach this 'Adjudicating Authority', established under the RERA, and the 'Adjudicating Authority' merely holds



that, as the 'Agreement' is titled as an 'Agreement of Lease', it has no jurisdiction to entertain their grievances raised under Section 18 of the said Act, then such interpretation cannot be in consonance and in tune with the object of the Act.

78. Therefore, the 'Authority', which grants registration under RERA, is different than the 'Authority', which is established to adjudicate the grievances of the aggrieved persons under the said Act. One Authority cannot encroach on the jurisdiction exercised or to be exercised by the another Authority. Here in the case, the 'Registration Certificate' to the Appellant is granted by the Regulatory Authority, established under Section 20 of the said Act and now the Appellant is calling upon the 'Adjudicating Authority', established under Section 71 of the RERA, to go behind that 'Registration Certificate' and to hold that the provisions of RERA are not applicable to the Appellant."

25. The Real Estate (Regulation & Development) Act, 2016 is a complete code in itself and as per the provisions of the Act, the legislature had categorically formed two separate bodies i.e the authority under section 20 for regulatory functions under the Act and the adjudication officer under Section 71 of the act for adjudicatory function. There is a clear distinction under the said act including the regulatory and adjudicatory functions as provided under the Act. Even the hon'ble apex court in the matter of Brahm Dutt v. Union of India, (AIR 2005 SC 730) has been observed as under:

If there are advisory and regulatory functions as well as adjudicatory functions to be performed, it may be appropriate to create two separate bodies for the same.



Thus based on this principle the hon'ble authority by admitting the present complaint is exercising the adjudicatory function which is against the principle of law.

26. The respondent further submitted that the statement of objects and reasons of the said Act clearly state that the RERA is enacted for effective consumer protection. RERA is not enacted to protect the interest of investors. As the said Act has not defined the term consumer, therefore the definition of "consumer" as provided under the Consumer Protection Act, 1986 has to be referred for adjudication of the present complaint. The complainant is an investor and not a consumer.
27. The respondent submitted that the OC was applied for the current phase: tower A, of the project on 31.07.2017 and as per the Haryana Real Estate (Regulation and Development) Rules, 2017, the current phase is beyond the scope of this hon'ble authority. However, while applying for the RERA registration of the whole project, the current phase was also included despite the same being beyond the ambit of RERA. While applying for the RERA registration the respondent has not given any specific date for handing over of the possession



since the OC has already been applied and the development work stands completed. Once the certificate is issued, subject to the provisions of this Act, the company becomes bound to deliver the project within such specified time as per the certificate and such certificate can't be called into question by any customer since it has been issued after due considerations of all the respected members of this authority.

28. The respondent submitted that it is trite law that the terms of the agreement are binding between the parties. The hon'ble Supreme Court in the case of "**Bharti Knitting Co. vs. DHL Worldwide Courier (1996) 4 SCC 704**" observed that that a person who signs a document containing contractual terms is normally bound by them even though he has not read them, and even though he is ignorant of their precise legal effect. It is seen that when a person signs a document which contains certain contractual terms, then normally parties are bound by such contract; it is for the party to establish exception in a suit. When a party to the contract disputes the binding nature of the signed document, it is for him or her to prove the terms



in the contract or circumstances in which he or she came to sign the documents.

29. The Hon'ble Supreme Court in the case of "**Bihar State Electricity Board, Patna and Ors. Vs. Green Rubber Industries and Ors, AIR (1990) 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 contains contractual terms is normally bound by them even though he has not read them, even though he is ignorant of the precise legal effect.

30. That Answering Respondent had from time to time obtained various licenses and approvals and sanctions along with permits, if any which are annexed herewith for reference of this Hon'ble Authority. Evidently Respondent had to obtain all licenses and permits in time before starting construction details of which are as under:-

- i. The license no.4 of 2012 dated 23.01.2012
- ii. Approval of building plan in respect of license no. 4.



iii. Environment clearance by State Environment
Impact Assessment Authority, Haryana.

iv. Renewal of licence

31. The respondent submitted that despite exercising diligence and continuous pursuance of project to be completed, project of answering Respondent could not be completed as prescribed for the following reasons:

- a. On 19.02.2013 the office of the executive engineer, Huda Division No. II, Gurugram had issued instruction to all developers to lift tertiary treated effluent for construction purpose for sewage treatment plant, Behrampur. Due to this instruction, the company faced the problem of water supply for a period of 6 months.
- b. Time and again various orders passed by the NGT staying the construction.
- c. Orders passed Hon'ble High Court of Punjab and Haryana wherein the hon'ble court has restricted use of groundwater in construction activity and directed use of only treated water from available seaweed



treatment plants. However there was no sewage treatment plant available which led to scarcity of water and further delayed the project.

d. Evidently there was lot of delay on part of government agencies in providing relevant permissions, licenses approvals and sanctions for project which resulted in inadvertent delay in the project which constitute a force majeure condition, as delay caused in these permissions cannot be attributed to respondent, for very reason that respondent, for very reason that respondent has been very prompt in making applications and replying to objections if any raised for obtaining such permissions.

e. It was not only on account of following reasons among others as stated above that the project got delayed and proposed possession timelines could not be completed in addition to above there were several others reasons also as stated below for delay in the project:



- i. The sudden surge requirement of labour and then sudden removal has created a vacuum for labour in NCR region. That the projects of not only the respondent but also of all the other developers have been suffering due to such shortage of labour and has resulted in delays in the project's beyond the control of any of the developers.
- ii. Moreover due to active implementation of social schemes like National Rural Employment Guarantee and Jawaharlal Nehru National Urban Renewal Mission, there was also more employment available for labours at their hometown despite the fact that the NCR region was itself facing a huge demand for labour to complete the projects.
- iii. Even today in current scenario where innumerable projects are under



construction all the developers in the NCR region are suffering from the after-effects of labour shortage on which the whole construction industry so largely depends and on which the Respondent have no control whatsoever.

- iv. The Ministry of environment and Forest and the Ministry of mines had imposed certain restrictions which resulted in a drastic reduction in the availability of bricks and availability of Sand which is the most basic ingredient of construction activity. The said ministries had barred excavation of topsoil for manufacture of bricks and further directed that no more manufacturing of bricks be done within a radius of 50 km from coal and lignite-based thermal power plants without mixing 25% of ash with soil.



- v. Shortage of bricks in region has been continuing ever since and the Respondent had to wait many months after placing order with concerned manufacturer who in fact also could not deliver on time resulting in a huge delay in project.
- vi. In addition the current Govt. has on 08.11.2016 declared demonetization which severely impacted the operations and project execution on the site as the labourers in absence of having bank accounts were only being paid via cash by the sub-contractors of the company and on the declaration of the demonetization, there was a huge chaos which ensued and resulted in the labourers not accepting demonetized currency after demonetization.
- vii. In July 2017 the Govt. of India further introduced a new regime of taxation



under the Goods and Service Tax which further created chaos and confusion owing to lack of clarity in its implementation. Ever since July 2017 since all the materials required for the project of the company were to be taxed under the new regime it was an uphill task of the vendors of building material along with all other necessary materials required for construction of the project wherein the auditors and CA's across the country were advising everyone to wait for clarities to be issued on various unclear subjects of this new regime of taxation which further resulted in delays of procurement of materials required for the completion of the project.

- viii. That it is further submitted that there was a delay in the project also on account of violations of the terms of the agreement



by several allottees and because of the recession in the market most the allottees have defaulted in making timely payments and this accounted to shortage of money for the project which in turn also delayed the project.

32. The respondent submitted that there was a stay on construction in furtherance to the direction passed by the hon'ble NGT. In furtherance of the above mentioned order passed by the hon'ble NGT, the construction activities at the project site was also delayed for several other reasons as stated in the aforesaid paragraphs and which were clearly prescribed under clause 31 of the agreement.

Determination of issues:

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issues wise findings of the authority are as under:

33. With respect to the **first issue** raised by the complainant, the authority came across that the respondent has delayed in providing the possession and completion of project. The promoters have violated the agreement by not giving the



possession on the due date i.e 25.09.2016 as per the agreement, thus, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016. As the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso to pay interest to the complainant, at the prescribed rate i.e 10.75%, for every month of delay till the handing over of possession under section 18(1). However, the status of the project is not known.

34. With respect to the **second issue**, the respondent submitted that the project is registered with the authority and the occupation certificate has already been received by the respondent on 07.03.2018 and the revised date of possession of the booked unit was 30.06.2018, thus the delayed period of possession w.e.f 09.01.2015 to 16.07.2015 i.e 06 months and 7 days may be deducted from the total period of delay. Therefore, refund at this stage would hamper the interest of the other allottees.

35. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.



34 (f) Function of Authority –

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

The complainant requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions and fulfil obligation which is reproduced below:

37. Powers of Authority to issue directions

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

Findings of the authority

36. The respondent admitted the fact that the project 68 Avenue is situated in sector-68, Gurugram, therefore, the hon'ble authority has territorial jurisdiction to try the present complainant. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Arun Kumar Gupta, Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real



estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction

37. The objections raised by the respondent 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 complainant at a later stage.

38. The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

39. The authority is of the view that the project is registered with the authority and the occupation certificate has already been received by the respondent on 07.03.2018 and the revised date of possession of the booked unit was 30.06.2018. The counsel for the respondent further submits that the matter was under litigation and has placed a copy of judgment dated 16.07.2015 and the delayed period of possession w.e.f 09.01.2015 to 16.07.2015 i.e 06 months and 7 days may be deducted from the total period of delay.

40. Considering all the facts and circumstances of the matter and taking into the period of litigation between the respondent



and HUDA, the authority if of the opinion that the complainant is entitled for delayed possession charges w.e.f 25.09.2016 minus the period w.e.f 09.01.2015 to 16.07.2015 i.e 06 months and 07 days in which the matter was sub-judice.

Decision and directions of the authority

41. The authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions to the respondent:

- (i) The respondent is directed to pay the complainant delayed possession charges w.e.f 25.09.2016 minus the period w.e.f 09.01.2015 to 16.07.2015 i.e 06 months and 07 days in which the matter was sub-judice.
- (ii) The respondent is further directed not to charge any maintenance charges amounting to Rs. 15,313/- and administrative charges amounting to Rs. 15000/- from the complainant.



42. The complaint is disposed off accordingly.

43. The order is pronounced.

44. Case file be consigned to the registry.

45. Copy of this order be endorsed to the registration branch.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 28.02.2019

Judgement uploaded on 28.03.2019



HARERA
GURUGRAM

