



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 601 OF 2022

Raghu Shivas Gupta

....COMPLAINANT(S)

VERSUS

Vatika Ltd.

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 05.08.2022

Hearing: 2nd (in all complaints)

Present: Mr. Sanjay S Chhabra, counsel for complainant through VC

(In all complaints)

Mr. Tarun Dhingra, counsel for respondent through VC

(In all complaints)

ORDER (RAJAN GUPTA - CHAIRMAN)

1. Case of the complainant is as follows: -

- (i) On the basis of brochure, representation and assurances of respondent, complainant booked a commercial apartment/unit No. 1039, measuring 500 sq. ft. on 10th floor of Block B of the project promoted by

respondents at agreed consideration of ₹36,56,250/-. Complainant paid ₹40,19,965/- to the respondent by 10.08.2013. In support of the payments made, a copy of bank statement has been annexed as Annexure-4 of the complaint. Same is admitted by respondent promoter and it has also been incorporated in the Builder-buyer agreement annexed as Annexure-2 at page no. 22.

(ii) Builder-buyer agreement was executed on 11.08.2016 (Annexure-2). Clause 15 of Agreement provides that assured return committed at the rate of ₹68.75 per sq. ft. per month i.e., ₹34,375/- per month will be paid to complainant till construction of the allotted unit is complete. Clause 16 provides that after completion of the construction, monthly assured returns will be paid at the rate of ₹62.50 per sq. ft. for upto 3 years from date of completion of construction.

(iii) Complainant alleges that respondent made payment of assured returns till September, 2021 but the same were stopped thereafter. Complainants further states that as per clause 13 of BBA, respondent promised to complete the project within 48 months from the date of execution of BBA, but possession of the unit has not been offered till now. Respondent has also failed to transfer ownership rights by executing Conveyance Deed in favour of complainant.



(iv) In View of above facts, Complainant has prayed for relief of possession and getting the sale /conveyance deed executed; and payment of assured returns from September, 2021 till possession of the apartment in question is delivered to him; or in the alternative respondent may refund total amount paid by complainant along with permissible delay interest.

2. On the other hand, respondents have submitted in their reply that:

(i) Respondent company has been developing the project "Vatika Mindscape" which is a commercial project consisting of four towers i.e., Tower A, B, C & D. Out of these four towers, Towers A, B & D are complete and have received Occupation Certificate from competent authorities vide memo no ZP 203/SD(DK)/2016/22138 dated 14.10.2016. Since the Tower in which complainant's units are situated is complete and has got Occupation certificate, relief of refund cannot be granted. Moreover, as respondent has not violated any term of the BBA. Relief of refund is not maintainable.

(ii) There is no relationship of builder and buyer between respondents and complainant. As Complainant was simply an investor who had approached respondents for availing investment opportunities and for steady rental income, in furtherance of said arrangement between the



parties, respondent company has already made payment of assured return till September, 2021.

(iii) Respondents cannot pay further assured returns to complainant due to prevailing laws. Respondents argued that on 21.02.2019, Central Government issued an ordinance "Banning of Unregulated Deposit 2019" ordinance, by virtue of which payment of assured returns became wholly illegal. Said ordinance was converted into an Act named "Banning of Unregulated Deposit Scheme Act, 2019" (BUDS Act in brief) on 31.07.2019. Respondents argue that on account of enactment of BUDS Act, they are prohibited from granting assured returns to complainants.

(iv) Accordingly, respondent prayed for dismissal of these complaints.

3. The Authority has gone through all facts and circumstances of these matters. It has gone through written statements as well as oral arguments put-forth by both sides. It observes that unit of complainant is situated in Tower B of respondent's project. Respondent has not got occupation certificate qua Tower B from Department of Town & Country Planning, Haryana on 14.10.2016. Therefore, request of complainant for refund of amount deposited by him cannot be accepted as same will adversely affect the project. Authority has to strike a balance between the interest of allottees and the project. It is the policy of the Authority to not allow refund in the cases where project is duly completed or is likely to be completed. In

the present cases, respondent has received Occupation Certificate from the competent authority. Therefore, complainants' prayer for refund only for the reason of non-execution of conveyance deed cannot be allowed. Surely conveyance deeds in favour of complainant can be executed. Authority directs the respondent to execute conveyance deed in favour of the complainants immediately. This grievance of the complainant is decided accordingly.

4. Regarding delay interest, in the captioned complaints compliant-allottees and respondent-promoter had executed the BBA under assured return scheme. As per clause 15 & 16 of the agreement, where allottee has made full payment of basic sales price, they are entitled to assured return at the agreed rate. According to this clause respondent had to pay assured returns to complainant at the rate ₹68.75/- per sq. ft. from the date of agreement till the completion of unit and at the rate ₹62.50/- per sq. ft. for up to 3 years from the date of completion of construction. In present matter, admittedly the respondent has duly paid the assured returns to the complainant at the agreed rate till September 2021. Thereafter respondent had stopped making further payment under guise of the argument that they could not have paid due to coming into force of BUDS Act, 2019. This argument of respondent that they stopped making payment of assured return from September, 2021 as such schemes of assured returns have been banned under the Banning of Deposit Schemes Act, 2019, was rejected by Authority Complaint No. 343 of 2021



titled as "Tanya Mahajan v. Vatika Ltd". Relevant part of the order is reproduced below:

8. Authority, therefore, has no hesitation in coming into a conclusion that a proper builder-buyer relationship exists between respondents and complainants because complainants had booked the unit for its physical delivery to them. Before completion of the project assured payment @ ₹71.50 per sq. ft. per month was agreed and after completion it was to be @ ₹65 per sq. ft. per month. Complainants are very much entitled to possession of the booked unit and its leasing as per their wish after taking over of possession. The respondents have not fulfilled their promise of offering possession to complainant. Complainants therefore are entitled to relief sought i.e. possession of the unit along with payment of overdue assured returns as per provisions of the agreement.

9. Respondents have taken a technical argument that BUDS Act has come into force w.e.f. July, 2019 and an ordinance preceding that was passed by Parliament of India in February, 2019. Further, under BUDS Act, unregulated deposits are prohibited, therefore, respondents' argument is that since the complainants are not allottees, they are depositors, therefore, they fall within the prohibitions provided in the BUDS Act.

10. Respondents have cited provisions of Sub Section 4 of Section 2 of the BUDS Act in which definition of deposits has been given. Opening line of the definition of the deposit reads ...
".... an amount of money received by way of an advance or loan or in any other form by any deposit taker with a promise to return whether of a specified period or otherwise either in cash or any kind or any specified service....."

Authority observes that none of the conditions listed in the aforesaid definition of "deposits" are fulfilled in the captioned complaints. The money paid by the complainants cannot be called advance or loan. It was very much a consideration for purchase of specified and identified apartments/ units in the duly licenced real estate project of the respondents. Further, definition deposit stipulates an essential condition that the deposit has taken with 'a promise to return after a specific period'. This condition is also not fulfilled in the present case. Provisions

of the agreement do not at all provide for return of the money paid by the complainants. It only provides for delivery of a pre-identified constructed unit in the lawfully licenced project of the respondents. The arguments of the respondents, therefore, are summarily rejected because consideration amount paid by complainant by no stretch of imagination can be categorised as deposits of finance for return in the form of investment bonus, profit or in any other form.

11. Respondents are desperately trying to deny legitimate rights of the complainants as are admissible to them in terms of the builder-buyer agreement executed and in terms of Real Estate (Regulation and Development) Act, 2016.

for the stated reasons respondents are liable to pay outstanding assured returns along with delay interest to complainants starting from October 2021 till August, 2022 i.e., month of passing of order. Accordingly, complainants are entitled to possession of their apartment/units and execution of conveyance deed in their favour along with payment of outstanding assured returns as per the agreement entered between the parties.

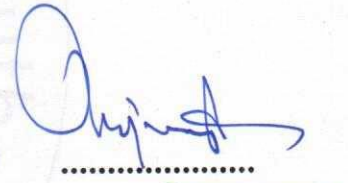
6. Authority accordingly orders respondent to offer possession and execute conveyance deed in favour of complainant and transfer clear title in respect of the unit. Till the time, possession is handed over by respondent in favour of complainant; complainant are entitled to get agreed monthly assured returns as decided in Builder-Buyers Agreement of each complaint case. Monthly assured returns had been decided @ ₹62.50 per sq. ft. after the completion of the unit.



Accordingly, monthly returns @ ₹31,250/- (500 sq. ft. @ ₹62.50/-) for the unit will be paid for the entire period from September, 2021 till August, 2022 i.e., the month of passing of this order along with interest as per Rule 15 of HRERA Rules, 2017. Upfront monthly assured returns payable to complainant works out to be ₹3,60,593/-.

It is also ordered that further monthly interest will be paid regularly by the respondents till lawful offer of possession is made to the complainants. Respondent is directed to pay the calculated amount within 90 days to the complainant

2. **Disposed of** in above terms. Order be uploaded on the website and files be consigned to record room after compliance.



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RAJAN GUPTA
[CHAIRMAN]



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DILBAG SINGH SIHAG
[MEMBER]