



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

Complaint no. : 1663 of 2021
First date of hearing: 24.03.2021
Date of decision : 25.05.2022

1. Pankajpreet Singh Bakshi s/o Sh. Brij Mohan Singh Bakshi
2. Mrs. Gunjan Sahni W/o Sh. Pankajpreet Singh Bakshi
(Both through authorized representative Mr. Brij Mohan Singh Bakshi)
R/O: - J-5/52, K Rajouri Garden,
New Delhi - 110052

Complainants

M/s VSR Infratech Pvt. Ltd.
A-22, Hill View Apartments, Vasant Vihar,
New Delhi - 110057

Versus

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Shri Harshit Goyal
Ms. Shriya Takkar and Mrs. Unnati
Anand

Advocate for the complainants
Advocates for the respondent

ORDER

1. The present complaint dated 22.03.2021 has been filed by the complainants/allottees 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Particular	Details
1.	Name of the project	68 Avenue at Village Badshahpur, Sector 68, Gurgaon Building B
2.	Nature of the project	68 Avenue, (Commercial Project)
3.	DTCP license no.	4 of 2012 dated 23.01.2012
4.	RERA registered/not registered	Registered vide no. 119 of 2017 dated 28.08.2017
5.	Unit no.	Office space in tower B, 3 rd floor
6.	Unit area	600 sq. ft. (As per 32 of complaint)
7.	Date of allotment	28.06.2018 (As per 28 of complaint)
8.	Date of execution of Memorandum of Understanding (MoU)	11.06.2018 (As per page 29 of complaint)
9.	Date of execution of builder buyer's agreement	Not executed

10.	Total consideration	Rs. 45,00,000/- (As per page 32 of complaint) Rs. 40,15,200/- (As per page 2 of reply – this amount is exclusive of IFMS and other charges)
11.	Total amount paid by the complainants.	Rs. 47,37,305/- (As per page 9 of complaint)
12.	Due date of delivery of possession	Cannot be ascertained
13.	Provision regarding assured return	<p>3</p> <p>3.1 That the developer from 06.06.2018 till the application of notice for offer of possession is issued, the developer shall pay to the allottee an Assured Return at the rate of Rs. 64.04/- (Rupees Sixty-four and Paisa Four Only per sq. ft. of super area of premises per month. After completion of construction till the first Lease, the developer shall pay to the allottee (s) an Assured Return @Rs. 56.25 /- (Rupees Fifty Six and Paisa Twenty Five Only) per sq. ft. of super area of premises per month (hereinafter referred to as the 'Assured return') .</p>
14.	Offer of possession	01.01.2019 (As per page 41 of complaint) Not a valid offer of possession
15.	Occupation certificate	02.08.2019 (As per page 82 of the reply)

B. Facts of the complaint

3. That a project known by the name of "68 Avenue" situated at sector 68, Gurugram was being developed by the respondent. The complainants coming to know about the same booked an office space in it on 28.06.2018. It led to allotment of office space measuring 600 sq. ft. in tower B at 3rd floor of the project for a total sum of Rs. 45,00,000/-. A memorandum of understanding w.r.t. subject unit was also executed between the parties.
4. It is the case of complainants that they paid a sum of Rs. 47,37,305/- to the respondent- builder at the time of allotment. Though no buyer's agreement was executed between the parties but vide MOU dated 11.06.2018, the respondent builder agreed to pay assured return at the rates of Rs. 64.04 and Rs. 56.25 per sq. ft. till the offer of possession and first lease respectively against the allotted unit.
5. It is further the case of the complainants that as per clause 19(a) of the application form, the respondent was bound to deliver possession of the allotted unit to them within a period of 36 months from the date of approval of building plans or signing of buyer's agreement. Since, no buyer's agreement was executed between the parties, so the due date of possession is to be calculated from the approval of building plans.
6. That as per the MOU, the respondent paid the amount of assured returns but failed to pay the same since March 2020.
7. That the respondent issued offer of possession of allotted unit on 01.01.2019, but without obtaining OC from the competent authority. So, it led to issuance of letter dated 23.01.2019 followed by reminder dated

13.02.2019 to the respondent asking it to pay assured returns and offer possession of the allotted unit after receiving OC but with no positive results.

8. It is further the case of complainants that though earlier, they booked unit no. H-54 in the project "114 Avenue" but were forced to surrender that booking and opt for the subject unit in the project detailed above.
9. That finding no alternative, the complainants filed the present complaint seeking possession of the allotted unit besides interest by way of DPC and payment of assured returns illegally stopped from March 2020 upto date as prayed above.

C. Relief(s) Sought:

10. The complainants have sought the following relief:

- i.) Direct the respondent to pay agreed **assured return charges** along with interest at the prescribed rate to the complainants accrued from the month of March 2020.
- ii.) Direct the respondent to pay **delayed possession charges** to the complainants.
- iii.) To set aside the possession letter dated 01.01.2019 issued by the respondent and to impose exemplary **penalty** upon it for issuance of unlawful and illegal possession letter dated 01.01.2019.
- iv.) Direct the respondent to submit building plan approval, environment clearance, fire NOC and occupation certificate of tower B of project in question i.e., "68 Avenue".

D. Reply by the respondent:

The respondent by way of written reply dated 26.07.2021 has made the following submissions:

11. It is submitted that the complainants have originally booked a unit no. H-54 in the project "114 Avenue" of the respondent. Upon discussion and mutual understanding between both the parties and vide letter dated 22.06.2017, the booking in the project 114 Avenue was cancelled and the amount paid was transferred to the booking to be made by the complainants in the project 68 Avenue i.e., the subject-matter of the allotted unit.
12. It is submitted that the complainants thereafter made an application for provisional allotment of Office Space on 3rd Floor, Tower B in the project developed by the respondent known as **68 Avenue (hereinafter referred to as the "Project")**. It is submitted that the complainants herein opted for the assured return scheme. Accordingly, the complainants were allotted unit no. H-54 vide allotment letter dated 28.06.2018.
13. That one of the offers made by the respondent at that point of time was that the unit would have a benefit of assured returns till the notice for offer of possession and the first lease respectively subject to force majeure and other conditions mentioned in the MoU. The complainants accordingly entered into an MoU dated 11.06.2018 with the respondent determining all the rights and liabilities of the parties.
14. That as per the Memorandum of Understanding (MOU) the price of the unit was Rs.40,15,200/- **exclusive** of Interest, free maintenance security

(IFMS), power back up charges, service tax and such other levies/cess /VAT/GST as may be imposed by the any statutory authority.

15. That the complainants made payments of Rs 40,15,200/- including service tax i.e., 100% payments towards the basic sale price to the respondent at the time of allotment. However, in addition to the above, they were also supposed to make other payments as detailed in para n.14 as per the demands raised by the respondent. It is submitted that the thereafter, the complainants made a payment of Rs. 7,22,105/- and a sum of Rs. 8,00,000/- was waived off by the respondent.
16. That it is pertinent to mention here that there was no time limit provided under the MoU for handing over the possession of the unit. Thus, the time was not the essence of the contract for delivering the possession. However, it was mutually agreed upon that the complainants would be entitled to the benefit of assured returns as per the MoU at the rates and stages agreed upon.
17. However, the payment of assured return was subject to force majeure clause as provided under clause 6 of the MoU and the relevant extracts of clause 6 are re-produced herein.

6.1 Force Majeure: in the event force majeure conditions prevails, then the payment of Assured Return shall remain suspended for such period and payment shall resume upon discontinuation of such force majeure conditions. In the event such force majeure conditions prevail beyond the period of 30 days then it shall be at the opinion of the parties to terminate this MOU and transaction contemplate herein. In such an event the Developer shall refund to the Allottee sums received from Allottee after deducting the amounts paid towards Assured return to the Allottee. Thereafter the Allottee shall not have any title or claim over the premises and the Developer shall be free to deal with commercial any manner whatsoever.

18. That from the above clause, it becomes quite evident that the complainants were entitled to assured return subject to force majeure conditions in developing the said project. It is pertinent to mention here that the respondent has already paid the assured return/lease rental to the tune of Rs 7,00,282-/ till February 2020. However, that payment was stopped in the March,2020 solely due to the force majeure condition i.e., the Covid-19 pandemic which continued and is still continuing. It is submitted that the Government of India declared nationwide lockdown due to COVID 19 pandemic effective from 24th March 2020 midnight. It is submitted that the construction and development of the project was affected due to this reason as well. It is submitted that the Authority vide its order dated 26.05.2020 also invoked the force majeure clause. It is submitted that the hardships being faced due to the prevailing covid-19 pandemic is not a hidden fact and is squarely covered by the force majeure clause of the MoU.
19. It is submitted that the construction and development of the project was affected due to force majeure conditions such as shortage of water for the purpose of construction, shortage of construction material, orders of stay passed by NGT prohibiting carrying out construction, banning of extraction of ground water, delay in various approvals from various agencies, increase in demand of labour, and cost of construction material, implementation of various social schemes by the Government, demonetization, stoppage of mining activities and introduction of new regime of taxation under the GST etc. etc. But despite all these hindrances, the respondent continued with construction activities and after completing

the project applied for its occupation on 28.03.2018 and which was received on 02.08.2019.

20. That from the facts as narrated above, it become quite evident that despite the Tower/unit of the complainants being complete in all respect, the respondent could not offer possession of the unit. However, in the present case, the issue is not related to delay in handing over the possession of the unit as time was not an essence of the contract and there was no time limit provided under the agreement between the parties.
21. Copies of all the relevant documents have been duly 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:

22. The respondent has raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. 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

23. 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 completed territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

24. The Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:-

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

So, in view of the provisions of the act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the relief sought by the complainant:

F.1 Direct the respondent to pay assured return charges along with the interest at the prescribed rate to the complainants accrued from the month of March 2020.

And

F.2 Direct the respondent to pay delayed possession charges to the complainants.

25. The above-mentioned relief no.1 and 2, as sought by the complainants are being taken together as the findings on one relief will definitely affect the result of the other relief and these reliefs are interconnected.
26. The complainants have sought assured return as per clause 3.1 of Memorandum of understanding a monthly return of **Rs. 33,750/- with effect from 06.06.2018 till the offer of possession is issued and** after completion of construction till the first lease, the developer would pay to the allottee (s) an assured return @ Rs. 56.25 /- per sq. ft. of super area of premises per month (hereinafter referred to as the '**Assured return** '). The respondent has not complied with the terms and conditions of the agreement. Though the amount of assured returns was paid till February 2020, but the respondent refused to pay the same by taking a force majeure condition.
27. The Act of 2016 defines "agreement for sale" means an agreement entered into between the promoter and the allottee [Section 2(c)]. An agreement defines the rights and liabilities of both the parties i.e., promoter and the allottee and marks the start of new contractual relationship between them. This contractual relationship gives rise to future agreements and

transactions between them. Therefore, different kinds of payment plans were in vogue and legal within the meaning of the agreement for sale. One of the integral parts of this agreement is the transaction of assured return inter-se parties. Though the "agreement for sale" after coming into force of this Act (i.e., Act of 2016) shall be in the prescribed form as per rules but this Act of 2016 does not rewrite the "agreement" entered between promoter and allottee prior to coming into force of the Act as held by the Honble Bombay High Court in case *Neelkamal Realtors Suburban Private Limited and Anr. v/s Union of India & Ors.*, (Writ Petition No. 2737 of 2017) decided on 06.12.2017. Since the agreement defines the buyer-promoter relationship therefore, it can be said that the agreement for assured return between the promoter and allottee arises out of the same relationship. Therefore, it can be said that the real estate authority has complete jurisdiction to deal with assured return cases as the contractual relationship arise out of agreement for sale only and between the same parties as per the provisions of section 11(4)(a) of the Act of 2016 which provides that the promoter would be responsible for all the obligations under the Act as per the agreement for sale till the execution of conveyance deed of the unit in favour of the allottee.

28. The builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured returns. Moreover, an agreement defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and the allottees

arises out of the same relationship and is marked by the original agreement for sale.

29. So, keeping in view the above-mentioned provisions of the BUDS Act of 2019 and the Companies Act 2013, it is to be seen as to whether an allottee is entitled to assured returns in a case where he has deposited substantial amount of sale consideration against the allotment of a unit with the builder at the time of booking or immediately thereafter and as agreed upon between them.
30. The Government of India enacted the Banning of Unregulated Deposit Schemes Act, 2019 to provide for a comprehensive mechanism to ban the unregulated deposit schemes, other than deposits taken in the ordinary course of business and to protect the interest of depositors and for matters connected therewith or incidental thereto as defined in section 2 (4) of the BUDS Act 2019 mentioned above.
31. The money was taken by the builder as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottees have a right to approach the authority for redressal of their grievances by way of filing a complaint and the same is maintainable for assured returns.

Now the proposition before the authority is whether an allottee is entitled for assured return even after expiry of due date of possession,

can claim both the assured return as well as delayed possession charges?

Though the complainants have also sought delay possession charges from the respondent on the ground that it has failed to offer the possession of the allotted unit by the due date, but the plea advanced in this regard is devoid of merit. First of all, no BBA was executed between the parties setting out the due date of possession. Secondly, after allotment of the subject unit to the complainants by the respondent, a MoU dated 11.06.2018 was executed between the parties setting out terms and conditions w.r.t. payment of assured return and the rates of its payment stagewise. It is an admitted fact that the respondent paid assured return to the complainants upto February 2020 and did not pay the same since March 2020. It is pleaded that due to Covid-19, the amount of assured return was not paid to the complainants w.e.f. March 2020 and the same has not been paid even after now. While discussing the effect of Covid-19, the respondent was allowed a benefit of six months from payment of assured return. However, after the expiry of that period, it is liable to pay that amount to the complainants as agreed upon and as per article 3 under clause 3.1 which provides that the allottees would be entitled to assured return at the rate of Rs.64.04 per sq. ft. of super area per month and after completion of construction till the first lease, the developer would pay assured returns @ Rs.56.25 per sq. ft. of super area per month but subject to TDS. Though the respondent offered possession of the subject unit to the complainants on 01.01.2019 but the same cannot be regarded as valid offer of possession as it was offered without receipt of OC. The OC was admittedly received by the respondent on 02.08.2019. So, upto that date, the complainants would be entitled to assured returns at the rates detailed earlier and thereafter at different rates till the date of first lease.

So, keeping in view these facts the complainants are entitled to assured return as agreed upon from the respondent against the allotted unit and not to delay possession charges as their interest has been secured by way of assured returns and which are more than delayed possession charges.

32. The respondent is directed to pay the amount of assured return at the agreed rate i.e., Rs.64.04/- per sq. ft. to the complainants from the date the payment of assured return has not been paid till the offer of possession is issued. After completion of the construction of the building, the respondent/builder would be liable to pay monthly assured returns @56.25/- per sq. ft. till the first lease as per clause 3.1 of MOU dated 11.06.2018
33. The respondent is also directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @ 7.40% p.a. till the date of actual realization. ***The Covid-19 period relaxation of six months as has been allowed on the directions of the Government is applicable as it was difficult to lease out the premises during that period.***

G. Directions of the authority:

24. 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 the amount of assured return at the agreed rate i.e., Rs.64.04/- per sq. ft. to the complainants from the date the payment of assured return has not been paid till the offer of possession is issued. After completion of the construction of the building, the respondent/builder would be liable to pay monthly assured returns @56.25/- per sq. ft. till the first lease as per clause 3.1 of MOU dated 11.06.2018.
 - ii. The respondent is also directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which legal consequences would follow.
25. The complaint stands disposed of.
26. File be consigned to registry.

V.I - 3
(Vijay Kumar Goyal)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 25.05.2022