BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 3957of 2019
First date of hearing : 13.11.2019
Date of decision : 10.11.2021

Krishna build estates private limited
R/O- 601, Devika tower, Nehru place,
New Delhi-110019 **Complainant**

Versus

Vatika limited.
R/O-A Vatika triangle, Sushant lok-1, block A,
M.G. Road, Gurugram-122002 **Respondent**

CORAM:
Dr. K.K. Khandelwal **Chairman**
Shri V.K. Goyal **Member**

APPEARANCE:
Shri Rohan Shrivastav Advocate for the complainant
Shri Venkat Rao Advocate for the respondent

ORDER

1. The present complaint dated 19.09.2019 has been filed by the complainant/allottee in Form CRA 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 to the allottees as per the agreement for sale executed inter se them.

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A. Project and unit related details

2. The particulars of the project, the details of 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	Town square 2, Sec 53, Gurugram 122004.
2.	Project area	1.6 acres
3.	Nature of the project	Commercial complex
4.	DTCP license no. and validity status	113 of 2008 dated 01.06.2008 Valid/renewed up to 31.05.2018 71 of 2010 dated 15.09.2010 valid/renewed upto14.09.2018 62 of 2011 dated 02.07.2011 valid/renewed upto 01.07.2024 76 of 2011dated 06.07.2011 valid/renewed upto 06.09.2017
5.	Name of licensee	Vatika ltd & 44 others.
6.	HRERA registered/ not registered	'Town square 2 registered vide no. 366 of 2017 dated 22.11.2017 for 13809.56 sq. Mtrs.
7.	HRERA registration valid up to	31.12.2018
8.	Occupation certificate	Not obtained
9.	Unit no.	Unit 161, G.F, block A [Page 15 of complaint]
10.	Unit measuring	Approximately 2535 sq. ft.
11.	Date of execution of buyer's agreement	03.06.2015 [Page 13 of complaint]
12.	Amount of assured return	Rs. 2,64,679.35 per month.

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		(page 57Annexure P-5 of the complaint)
13.	Total consideration as per statement of account	Rs. 3,38,71,173/- (Page 43 annexure P-2of complaint)
14.	Total amount paid by the complainant as per statement of account	Rs. 338,71,173/- (page 43 annexure P-2 of complaint)
15.	Due date of delivery of possession as per clause 17 of the said agreement i.e. 48 months from the date of execution of buyer's agreement (03.06.2015) [Page 27 of complaint]	03.06.2019
16.	Date of offer of possession to the complainant	28.05.2019
17.	Delay in handing over possession till date of decision i.e. 10.11.2021	2 years 5 months 7 days

B. Facts of the complaint

3. The complainants submitted that he booked a showroom space in the project of the respondent called Town Square2, situated at Sector 53, Gurugram 122004, admeasuring 2,535 sq. ft. for total consideration of Rs 3,38,71,172.

4. The complainant submitted that he paid upto the respondent a total sum of Rs. 3,38,71,173/- which stands duly acknowledged by the respondent under the account statement of the petitioner in the record of the respondent.

5. The complainant submitted that respondent duly paid assured return for the showroom of the petitioner @Rs 2,64,679.35 per month. Under the grab of handing over possession, the respondent,

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unilaterally, stopped payment of assured return from October 2018 & non-payment whereof continues till date.

4. The complainant submitted that by and under letter dated 20.10.2018 the respondent informed him that it was commencing the process of handing over its project claiming to have completed the construction and called him to pay the full and final amount against the said property. Subsequent to the receipt of the aforesaid letter dated 20.10.2018, the representatives of the petitioner visited the site and were shocked to discover that the project was far from completion; no occupation certificate, which would enable the respondent to hand over possession of the petitioner, had been received; and requested the respondent to intimate receipt of OC. Repeated, and frequent, correspondence addressed by the petitioner to the respondent, inter-alia, seeking intimation of status of OC; possible handing over possession upon completion of the project and receipt of occupation certificate; payment of assured return till completion; and handing over of the project. Despite such exchange of communications between the parties, the respondent has neither completed the project nor received the OC, as a result the respondent is in no position to hand over/give petitioner possession of its property. Notwithstanding such factual state of affairs, the respondent, illegally, and in an untenable manner, continues to deprive the petitioner of the assured return of Rs 2,64,679.35 per month from October 2018, till date.

C. **Relief sought by the complainants:**

i. Payment of assured return of Rs 2,64,679.35 per month from October 2018 till date of actual payment along with interest thereon @18% per annum, along with cost, and compensation.

D. Reply by the respondent

5. The respondent has submitted that the Complainants had entered into an agreement for purchase of a commercial space by way of the Builder Buyers Agreement executed on 20.04.2016 (hereinafter referred as the "**Agreement**"). Copy thereof is already filed by complainant and the same been relied upon by the Developer/Respondent.

6. Prior to offering to purchase the commercial space in the Project, the Complainant had made elaborate and detailed enquiries with regard to the nature of sanctions/permissions obtained by the Respondent for the purpose of the development/implementation of the Project referred to above and being fully satisfied with the same, the Complainants took an independent and informed decision, uninfluenced in any manner by the Respondent to purchase the commercial space in question. Moreover, the Complainant Company is also one of the Contractor of the Respondent and doing the construction work of Respondent's projects.

7. That the Agreement stipulated that interest @ 2% per annum shall be levied on the purchaser in the event of default/delay in payment of outstanding amount and in the event of non-payment of amount due along with interest, the allotment is liable to be cancelled and earnest money along with delayed payment interest and other applicable charges was liable to be forfeited or to be recovered.

8. That it was further stipulated in the Agreement that the timely completion of the Project is subject to timely payment of all amounts payable by the allottes including the Complainant and delay in constriction could also occur for reasons beyond the control of the Respondent. The possession of the completed commercial space was already offered by the Respondent, within 48 months from the date of execution of the Agreement.

9. That the Complainant was not complying with its contractual obligations to pay the timely instalments. The respondent has issued Intimation for possession to the respondent dated 20.10.2018, further its Reminder letter dated 01.11.2018 was also issued. But respondent did not pay any heed towards the same. Thereafter, respondent has also issued another reminder as final opportunity dated 06.12.2018 to comply with the precious intimation and reminders and further having no other alternate, the respondent has also issued notice for termination dated 16.01.2019 to the respondent wherein respondent has categorically informed the complainant to clear the outstanding amount. Thereafter on 28.05.2019, the respondent has further issued offer of possession to the respondent but till date possession has not been taken over by the complainant. Copy of the letter dated 20.10.2018 intimidating about the possession is annexed as **Annexure R-2**. Copy of the Reminder letter dated 01.11.2018 is annexed as **Annexure R-3**. Copy of the Reminder as final opportunity dated 06.12.2018 is annexed as **Annexure R-4**. That the complainant has delayed and defaulted in making the final payments, which were due on offer of possession.

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10. Thus the complainant has defaulted and violated their contractual obligations and they are merely trying to wriggle out of the contract and attempting to make an unlawful gain by demanding refund along with interest.

11. That instead of clearing the outstanding dues and taking possession of the Commercial Space, the Complainant has filed this false and frivolous complaint alleging delay in completion of construction. As per agreed terms of the Agreement, in terms of Clause 17 thereof, the Respondent was to endeavour to offer possession of the commercial space in question within 48 months from the date of execution of the Agreement. In the present case, the respondent has already offered the possession to the respondent.

12. That the present complaint filed by the Complainants seeking payment of assured return is not maintainable as per the newly promulgated Ordinance i.e. "Banning of Unregulated Deposit Scheme Ordinance 2018" and further "Banning of Unregulated Deposit Scheme Act. 2019. Copy of the Banning of Unregulated Deposit Scheme Act. 2019 is annexed as **Annexure R-5.** The Government banned such Assured / committed Returns and schemes of such returns completely. Thus, in view of the above-mentioned Ordinance and Act, the Assured return or returns on investment in any form is not payable.

In the matter of "***Brhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd.***" (Complaint No. 141 of 2018), the Hon'ble Haryana Real Estate Regulatory Authority, Gurugram has held that:

"8. Since RERA Act deals with the builder buyer relationship to the extent of timely delivery of possession to the buyer or deals with withdrawal from the project, as per provisions of section 18(1) of the Act.

9. The buyer is directed to pursue the matter with regard to getting assured return as per the MoU by filing a case before appropriate forum."

In another matter of ***"Sh. Bharam Singh & Anr. Vs. Venetian LDF Projects LLP"*** (Complaint No. 175 of 2018) the Hon'ble Haryana Real Estate Regulatory Authority, Gurugram has held that:

"As already decided by the authority in complaint no.141 of 2018 titled as Brhimjeet Versus M/s Landmark Apartments Pvt. Ltd. no case is made out by the complainant. Counsel for respondent has placed on record a Supreme Court judgment dated 25.7.1997 vide which he has pleaded the doctrine of precedent. Since the authority has taken a view much earlier as stated above, the authority cannot go beyond the view already taken. In such type of assured return schemes, the authority has no jurisdiction, as such the complainant is at liberty to approach the appropriate forum to seek remedy. However, at the instance of the complainant, a direction is issued to the respondent/builder to complete the construction work within the time framed as per MoU and fulfil his committed liability."

13. That there is no cause of action arose for the filling the present complaint as respondent has not committed any violation of the RERA Act or the Rules. Hence the disputes, if any, can be adjudicated in a Civil Court only. The Real Estate (Regulation and Development) Act, 2016 does not apply in the instant case. The Complainant is trying to abuse the due process of law, for undue personal gains. As such, the above tilted Complaint is required to be dismissed on this ground alone.

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14. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

15. The respondent no. 1 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

16. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

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;

The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.

Section 34-Functions of the Authority:

34(f) of the Act provides 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.

So, in view of the provisions of the Act of 2016 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.I. Assured returns

17. While filing the claim petition besides delayed possession charges of the allotted unit as per builder buyer agreement dated 03.06.2015, the claimant has also sought assured returns on monthly basis as per clause 16 of builder buyer agreement at the rate of Rs 104.41/- per sq. ft. of super area per month till the construction of the said commercial unit is complete. It is pleaded by the claimant that the respondents have not complied with the terms and conditions of the agreement. Though for some time the amount of assured returns was paid but later on, the respondents refused to pay the same by taking a plea of the Banning of

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Unregulated Deposit Schemes Act, 2019 (herein after referred to as the Act of 2019). But that Act does not create a bar for payment of assured returns even after coming into operation and the payments made in this regard are protected as per section 2(4)(iii) of the above-mentioned Act. However, the plea of respondents is otherwise and who took a stand that though they paid the amount of assured return upto the year 2018 but did not pay assured return amount after coming into force of the Act of 2019 as the same was declared illegal.

18. The Act of 2016 defines "agreement for sale" means an agreement entered into between the promoter and the allottee [Section 2(c)]. An agreement for sale is defined as an arrangement entered between the promoter and allottee with freewill and consent of both the parties. 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. 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 Hon'ble 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 regulatory 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 allottees. Now, two issues arise for consideration as to:

i. Whether authority is within the jurisdiction to vary its earlier stand regarding assured return due to changed facts and circumstances.
ii. Whether the authority is competent to allow assured returns to the allottees in pre-RERA cases, after the Act of 2016 came into operation,
iii. Whether the Act of 2019 bars payment of assured returns to the allottees in pre-RERA cases

19. While taking up the cases of ***Brhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd. (complaint no 141 of 2018)***, and ***Sh. Bharam Singh & Anr. Vs. Venetain LDF Projects LLP"*** (complaint no 175 of 2018) decided on 07.08.2018 and 27.11.2018 respectively, it was held by the authority that it has no jurisdiction to deal with cases of assured returns. Though in those cases, the issue of assured returns was involved to be paid by the builder to an allottee but at that time, neither the full facts were brought before the authority nor it was argued on behalf of the allottee that on the basis of contractual obligations, the builder is obligated to pay that amount. However, there is no bar to take a different view from the earlier one if new facts and law have been brought before an adjudicating authority or the court. There is a doctrine of ***"prospective overruling"*** and which provides that the law declared by the court applies to the cases arising in future only and its applicability to the cases which have attained finality is saved because the repeal would otherwise work hardship to those who had trusted to its existence. A reference in this regard can be made to the case of ***Sarwan Kumar & Anr Vs. Madan Lal Aggarwal*** Appeal (civil) 1058 of 2003 decided on 06.02.2003 and wherein the hon'ble apex court observed as mentioned above. So, now a plea raised with regard to maintainability of the complaint in the face of earlier orders of the authority in not tenable. The authority can take different view from the earlier one on the basis of new facts and law and the pronouncements made by the apex court of the land. It is now well settled preposition of law that when payment of assured returns is part and parcel of builder buyer's agreement (maybe

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there is a clause in that document or by way of addendum , memorandum of understanding or terms and conditions of the allotment of a unit), then 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 return. Moreover, an agreement for sale defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allotee arises out of the same relationship and is marked by the original agreement for sale. Therefore, it can be said that the authority has complete jurisdiction with respect to assured return cases as the contractual relationship arise out of the agreement for sale only and between the same contracting parties to agreement for sale. In the case in hand, the issue of assured returns is on the basis of contractual obligations arising between the parties. In cases of ***Anil Mahindroo & Anr. v/s Earth Iconic Infrastructure Pvt. Ltd.*** (Company Appeal (AT) (Insolvency) No. 74 of 2017) and ***Nikhil Mehta and Sons (HUF) and Ors. vs. AMR Infrastructure Ltd.*** (CA NO. 811 (PB)/2018 in (IB)-02(PB)/2017) decided on 02.08.2017 and 29.09.2018 respectively, it was held that the allottees are investors and have chosen committed return plans. The builder in turn agreed to pay monthly committed return to the investors. Thus, the amount due to the allottee comes within the meaning of 'debt' defined in Section 3(11) of the I&B Code. Then in case of ***Pioneer Urban Land and Infrastructure Limited & Anr. v/s Union of India & Ors.*** (Writ Petition (Civil) No. 43 of 2019) decided on 09.08.2019, it was observed by the Hon'ble Apex Court of the land that *"...allottees who had entered into "assured return/committed*

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returns' agreements with these developers, whereby, upon payment of a substantial portion of the total sale consideration upfront at the time of execution of agreement, the developer undertook to pay a certain amount to allottees on a monthly basis from the date of execution of agreement till the date of handing over of possession to the allottees". It was further held that 'amounts raised by developers under assured return schemes had the "commercial effect of a borrowing' which became clear from the developer's annual returns in which the amount raised was shown as "commitment charges" under the head "financial costs". As a result, such allottees were held to be "financial creditors" within the meaning of section 5(7) of the Code" including its treatment in books of accounts of the promoter and for the purposes of income tax. Then, in the latest pronouncement on this aspect in case ***Jaypee Kensington Boulevard Apartments Welfare Association and Ors. vs. NBCC (India) Ltd. and Ors.*** (24.03.2021-SC): MANU/ SC/0206 /2021, the same view was followed as taken earlier in the case of ***Pioneer Urban Land Infrastructure Ld & Anr.*** with regard to the allottees of assured returns to be financial creditors within the meaning of section 5(7) of the Code. Then after coming into force the Act of 2016 w.e.f 01.05.2017, the builder is obligated to register the project with the authority being an ongoing project as per proviso to section 3(1) of the Act of 2017 read with rule 2(o) of the Rules, 2017. The Act of 2016 nas no provision for re-writing of contractual obligations between the parties as held by the Hon'ble Bombay High Court in case ***Neelkamal Realtors Suburban Private Limited and Anr. v/s Union of India & Ors.,*** (supra) as quoted

earlier. So, the respondent/builder can't take a plea that there was no contractual obligation to pay the amount of assured returns to the allottee after the Act of 2016 came into force or that a new agreement is being executed with regard to that fact. When there is an obligation of the promoter against an allottee to pay the amount of assured returns, then he can't wriggle out from that situation by taking a plea of the enforcement of Act of 2016, BUDS Act 2019 or any other law.

20. It is pleaded on behalf of respondent/builder that after the Banning of Unregulated Deposit Schems Act of 2019 came into force, there is bar for payment of assured returns to an allottee. But again, the plea taken in this regard is devoid of merit. Section 2(4) of the above mentioned Act defines the word ' deposit' as *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 after a specified period* or otherwise, either in cash or in kind or in the form of a specified service, *with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include*

    i. *an amount received in the course of, or for the purpose of, business and bearing a genuine connection to such business including—*

    ii. *advance received in connection with consideration of an immovable property under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement.*

21. A perusal of the above-mentioned definition of the term 'deposit' shows that it has been given the same meaning as assigned to it

under the Companies Act, 2013 and the same provides under section 2(31) includes any receipt by way of deposit or loan or in any other form by a company but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India. Similarly rule 2(c) of the Companies (Acceptance of Deposits) Rules, 2014 defines the meaning of deposit which includes any receipt of money by way of deposit or loan or in any other form by a company but does not include.

i. *as a advance, accounted for in any manner whatsoever, received in connection with consideration for an immovable property*
ii. *as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;*

22. So, keeping in view the above-mentioned provisions of the 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.

23. 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.

24. It is evident from the perusal of section 2(4)(l)(ii) of the above-mentioned Act that the advances received in connection with consideration of an immovable property under an agreement or arrangement subject to the condition that such advances are adjusted against such immovable property as specified in terms of the agreement or arrangement do not fall within the term of deposit, which have been banned by the Act of 2019.

25. Moreover, the developer is also bound by promissory estoppel. As per this doctrine, the view is that if any person has made a promise and the promisee has acted on such promise and altered his position, then the person/promisor is bound to comply with his or her promise. When the builders failed to honour their commitments, a number of cases were filed by the creditors at different forums such *as* ***Nikhil Mehta, Pioneer Urban Land and Infrastructure*** which ultimately led the central government to enact the Banning of Unregulated Deposit Scheme Act, 2019 on 31.07.2019 in pursuant to the Banning of Unregulated Deposit Scheme Ordinance, 2018. However, the moot question to be decided is as to whether the schemes floated earlier by the builders and promising as assured returns on the basis of allotment of units are covered by the abovementioned Act or not. A similar issue for consideration arose before Hon'ble RERA Panchkula in case ***Baldev Gautam VS Rise Projects Private Limited*** (*RERA-PKL-2068-2019*) where in it was held on 11.03.2020 that a builder is liable to pay monthly assured returns to the complainant till possession of respective apartments stands handed over and there is no illegality in this regard.

26. The definition of term 'deposit' as given in the BUDS Act 2019, has the same meaning as assigned to it under the Companies Act 2013, as per section 2(4)(iv)(i) i.e, explanation to sub-clause (iv). In pursuant to powers conferred by clause 31 of section 2, section 73 and 76 read with sub-section 1 and 2 of section 469 of the Companies Act 2013, the Rules with regard to acceptance of deposits by the companies were framed in the year 2014 and the same came into force on 01.04.2014. The definition of deposit has been given under section 2 (c) of the above-mentioned Rules and as per clause xii (b), as advance, accounted for in any manner whatsoever received in connection with consideration for an immovable property under an agreement or arrangement, provided such advance is adjusted against such property in accordance with the terms of agreement or arrangement shall not be a deposit. Though there is proviso to this provision as well as to the amounts received under heading 'a' and 'd' and the amount becoming refundable with or without interest due to the reasons that the company accepting the money does not have necessary permission or approval whenever required to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under these rules however, the same are not applicable in the case in hand. Though it is contended that there is no necessary permission or approval to take the sale consideration as advance and would be considered as deposit as per sub-clause 2(xv)(b) but the plea advanced in this regard is devoid of merit. First of all, there is exclusion clause to section 2 (xiv)(b) which provides that unless specifically excluded

under this clause. Earlier, the deposits received by the companies or the builders as advance were considered as deposits but w.e.f. 29.06.2016, it was provided that the money received as such would not be deposit unless specifically excluded under this clause. A reference in this regard may be given to clause 2 of the First schedule of Regulated Deposit Schemes framed under section 2 (xv) of the Act of 2019 which provides as under:-

> *(2) The following shall also be treated as Regulated Deposit Schemes under this Act namely:-*
>
> ***(a)*** *deposits accepted under any scheme, or an arrangement registered with any regulatory body in India constituted or established under a statute; and*
>
> ***(b)*** *any other scheme as may be notified by the Central Government under this Act.*

27. 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 allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.

28. It is not disputed that the respondent is a real estate developer, and it had obtained registration under the Act of 2016 for the project in question. The authority under this Act has been regulating the advances received under the project and its various other aspects. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the later from

the former against the immovable property to be transferred to the allottee later on. If the project in which the advance has been received by the developer from an allottee is an ongoing project as per section 3(1) of the Act of 2016 then, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings.

G. Directions of the authority

29. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:

    i. The complainant is directed to pay outstanding dues, if any, after adjustment of amount of assured returns.

    ii. The respondents are also directed to pay the amount of assured return as agreed upon with the complainant from March 2018 till the date of handing over possession.

    iii. The respondents shall not charge anything from the complainant which is not part of the agreement of sale.

30. Complaint stands disposed of.

31. File be consigned to registry.

Dr. K.K. Khandelwal
Chairman

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 10.11.2021