



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह. सिविल लाईंस. गुरुग्राम, हरियाणा

PROCEEDINGS OF THE DAY		27
Day and Date	Tuesday and 11.10.2022	
Complaint no.	CR/1088/2022 Case titled as Mukesh Nayar Vs. Vatika Ltd	
Complainant	Mukesh Nayar	
Represented through	S/Shri Abhijeet Gupta and Krishna Sharma Advocates	
Respondent	M/s Vatika Ltd	
Respondent Represented	Ms. Ankur Berry Advocate Shri Vipin Morya AR of the company	
Last date of hearing	05.07.2022	
Proceeding Recorded by	Naresh Kumari and HR Mehta	
Proceedings		
The present complaint has been received on 15.03.2022 and the reply was received on 13.07.2022.		
Succinct facts of the case are as under:		
S.no.	Particulars	Details
1.	Name of the project	Vatika Inxt City Center at Sector 83, Gurugram, Haryana
2.	Allotment letter	18.08.2012 (annexure A, page 30 of complaint)
3.	Date of builder buyer agreement	29.08.2012 (page 32 of complaint)
4.	Unit no.	151-A, tower D admeasuring 500 sq.ft. (annexure A, page 30 of complaint)

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Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अंतर्गत गठित प्राधिकरण
भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16



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UR/1088/P022

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5.	New unit no.	525, 5 th floor, block C (annexure C, page 54 of complaint)
7.	Provision regarding assured return	<p>Clause 12. Assured Return and Leasing Arrangement</p> <p><i>Since the Buyer has paid the full basic sale consideration for the said commercial unit upon signing of this agreement and has also requested for putting the same on lease in combination with other adjoining units/spaces of other owners after the said Building is ready for occupation and use, the Developer has agreed to pay Rs. 65/- per sq.ft. super area of the said commercial unit per month by way of assured return to the Buyer from the date of execution of this agreement till the completion of construction of the said Building. The buyer hereby gives full authority and powers to the Developer to put the said Commercial Unit in combination with other adjoining commercial units of other owners, on lease, for and on behalf of the Buyer, as and when the said Building/said commercial Unit is ready and fit for occupation. The buyer has clearly understood the general risks involved in giving any premises on lease to third parties and has undertaken to bear the said risks exclusively without any liability whatsoever on the part of the Developer or the confirm party. It is further agreed that:</i></p> <p><i>i. The Developer will pay to the Buyers Rs. 65/- per sq.ft. super area of the said commercial unit as committed return for upto three years from the date of completion of construction of the said building or till the said commercial unit is put on lease, whichever is earlier. After the said commercial unit is put on lease in the above manner, then payment of the aforesaid committed return will come to an end and the Buyer will start receiving lease rental in</i></p>

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		<p><i>respect of the said commercial unit in accordance with the lease document as may be executed and as described hereinafter.</i></p> <p>ii.....</p> <p>iii.....</p> <p>iv.....</p> <p>v. <i>The developer expects to lease out the said commercial unit (individually or in combination with other adjoining units) at a minimum lease rental of Rs. 65/- per sq.ft. super area per month for the first term (of whatsoever period). If on account of any reason the lease rent achieved in respect of the first term of the lease is less than the aforesaid Rs. 65/- per sq.ft. super area per month, then the Developer shall pay to Buyer a one time compensation calculated at the rate of @Rs. 120/- per sq.ft. super area for every rupee drop in the lease rental below Rs. 65/- per sq.ft. super area per month. This provision shall not apply in case of second and subsequent leases/lease terms of the said Commercial unit.</i></p> <p>vi. <i>However, if the lease rental in respect of the aforesaid first term of the lease exceeds the aforesaid minimum lease rental of Rs. 65/- per sq.ft. super area, then, the buyer shall pay to the Developer additional basic sale consideration calculated at RS. 60/- per sq.ft. super area of the said commercial unit for every one rupee increase in the lease rental over and above the said minimum lease rental of Rs. 65/- per sq.ft. super area per month. This provision is confined only to the first term of the lease and shall not be applicable in case of second and subsequent leases/lease terms of the said commercial unit</i></p>
8.	Due date of possession	29.08.2015

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हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम
CR/10888/2022

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		*Note: Possession clause is not given in file. So, taken from another file of the same project
9.	Total sale consideration	Rs. 22,50,000/- as per clause 1 of the agreement (page 34 of complaint)
10.	Paid up amount	Rs. 23,19,525/- as per clause 1 of the agreement (page 34 of complaint)
11.	Offer of possession	Not offered
12.	Occupation certificate	Not obtained
13.	Assured return amount paid by the respondent till 30.09.2018	Rs.23,87,014/- (annexure R2, page 39 of reply)

The counsel for the respondent states that in another matter titled as Vinod Agarwal versus Vatika, a relief was granted on the same grounds and the same has been challenged before the Tribunal and the stay has been granted in that matter. The question before the Tribunal is whether the assured return issues fall within the jurisdiction of RERA due to the coming of the BUDS Act, 2019.

The AR of the respondent company also states that in case before the Civil Court, Gurugram in case titled as Naresh Parshad versus Vatika Ltd. vide order dated 22.05.2022, the Hon'ble Civil Court has observed that after passing of the BUDS Act, the developer is not liable to pay assured return. A reference is also made to an order of J&K High Court in favour of his argument.

The counsel for the complainant states that the stay order of the Tribunal in the above matter is qua the specific case and not in general. He further states that this authority has passed a detailed order in the case of "Madhushree Khetan versus Vatika Limited in CR No.1239 of 2021 where this issue has been finally decided at the level of the Authority on 04.02.2022 and relief is being sought by the complainant on similar grounds.

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CR/1068/2022

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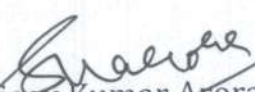
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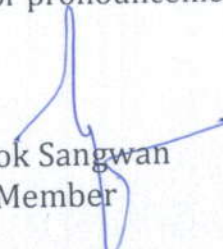
Arguments heard.


Both the counsels may file written arguments within a period of one week if they wish to do so.

Order reserved.

Matter to come up on 24.11.2022 for pronouncement of orders.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member


Vijay Kumar Goyal
Member
11.10.2022