

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

<b>Complaint no.</b>	:	<b>968/2021</b>
<b>Date of Complaint:</b>		<b>01.03.2021</b>
<b>Date of order</b>		<b>05.05.2023</b>

1. 2.	Sh. Jasbir Singh Vohra s/o Bhagat Singh Vohra Smt. Narendra Kaur Vohra w/o Jasbir Singh Vohra both r/o: J-46, First Floor, Vikas Puri, New Delhi	<b>Complainants</b>
Versus		
	VSR Infratech Private Limited <b>R/o:</b> A-22, Hill View Apartment, New Delhi-110057	<b>Respondent</b>

<b>CORAM:</b>	
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Shashi Kant (Advocate)	Complainants
Sh. Shriya Takkar (Advocate)	Respondent

**ORDER**

- The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 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 provisions of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

**A. Unit and project related details**

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Name of the project	"68 Avenue", Sector 68, Village Badshapur, Gurugram, Haryana
2.	Project area	3.23 acres
3.	Nature of the project	Commercial Colony
4.	DTCP license no. and validity status	4 of 2012 dated 23.01.2012 valid up to 22.01.2020
5.	Name of licensee	Yad Ram and 1 other
6.	RERA Registered/ not registered	119 of 2017 Dated 28.08.2017
7.	Unit no.	2 or 3 <sup>rd</sup> floor, Tower/block- B (Page no. 23 of complaint)
8.	Unit area admeasuring	225 sq. ft. (Page no. 23 of complaint)
9.	Date of building plans approval	11.07.2012 (As per the project details)
10.	Date of execution of MOU	27.10.2014  (No builder buyer agreement has been executed inter-se parties, but a similar document containing rights and liabilities of both the parties has been placed on record)  (Page no. 21 of the complaint)
11.	Possession clause	<b>19.(a) Possession</b>



		<p>That the company shall make all efforts to apply for occupation certificate in respect of the project not later than 36 months from the date of approval of building plans or signing of the buyer's agreement, whichever is later, subject to certain limitations as provided in the buyer's agreement and the timely compliance of the provisions of the buyer's agreement by the applicant.</p> <p>(As per the allotment letter)</p>
12.	Due date of possession	<p>No due date of possession is evident from MOU dated 27.10.2014 between the parties and buyer's agreement was not executed . However in a connected matter of the same project bearing complaint no. 1069 of 2018 decided on 28.02.2019 , the due date of possession was taken from the execution of the buyer;s agreement or start of construction with effect from 26.07.2012 . Since there is no buyer's agreement executed between the parties and start of construction of the same project is 26.07.2012 , so as per the judgement of the Hon'ble Supreme court in case Fortune Infrastructure and Ors vs Trevor D'Lima and ors. MANU /SC/0253/2018 , it is taken as three years from the date of</p>

		execution of MOU and which comes to 27.10.2017
13.	Total sale consideration	Rs.20,25,000/- (Exclusive of tax) (As per on page 23 of complaint)
14.	Amount paid by the complainants	Rs.21,00,087/- (As alleged by the complainant)
15.	Occupation certificate /Completion certificate	02.08.2019
16.	Offer of possession	19.08.2020 (As per on page 62 of complaint)
17.	Legal Notice	10.09.2020

**B. Facts of the complaint:**

3. That a project by the name of the project "68 Avenue" in Sector 68, Village Badshahpur, Distt. Gurgaon was being developed by the respondent. The complainants visited the sales office of the respondent wherein it was agreed upon that if they pay 100% of the total value then they would get assured return @ Rs. 90/- per square feet per month.
4. The complainants coming to know about the same applied for a commercial unit admeasuring 225 sq. ft. for a total sale consideration of Rs.20,25,000/-. At the time of booking of the unit, a memorandum of understanding was executed between the parties on 27.10.2014.
5. That at the time of execution of memorandum of understanding, it was promised that a sum of Rs. 90/- per square feet per month would be paid by the respondent to complainants as assured return till handed over the possession of the unit.

6. That it was specifically agreed between the parties that as per the Clause no. 3.1, of the MOU , the assured return amount of Rs. 90/- per Sq. feet per month would be payable to the applicant till the date of notice of possession. It is also respectfully submitted that after getting the possession of unit the respondent would pay a sum of Rs. 67.50/- per sq. ft per month as rent to the complainant till issuance of LOI from the prospective lessee. It is pertinent mention here that after getting lease with prospective lessee, the respondent would pay a sum of Rs. 90/- per square ft to the complainants as per the agreed terms of clause 3.2 of MOU.
7. That though the respondent started payment of assured return but all of a sudden, stopped the payment from December 2017. Thereafter the complainants sent various reminders to the respondent to pay assured return payment but met with no positive result.
8. That the complainants visited the project and were astonished to note that there is no development going on the project and the site has been lying as is whereas basis.
9. That according to the terms and conditions of MOU, the possession of the unit was to be delivered within 36 from the date of approval of building plan or signing of the buyer Agreements, but till today, the construction is still un-complete.
10. That the respondent has not informed anything regarding development of the project or tentative date of possession or allotted any demarcation/property number etc. Moreover, the respondent has not paid any Assured Return from December 2017 to till date.

11. That on 19.08.2020, a possession letter was sent by the respondent. However, on a visit to the site , the complainants were astonished to note that the project was still uncomplete, and construction was going on and the possession letter was sent knowingly and intentionally in order to harass them.
12. That the complainants again visited the respondent and asked whether it has received any official confirmation from the statutory authorities. On this it was replied in negative and said that the said O.C. was under process and it would receive the same shortly. But the respondent has not received the O.C. till date.
13. It is also submitted that respondent also sent a letter along with possession letter in which it demanded payment of Rs. 22,98,085/- from the complainants. After receiving that letter, the complainants asked the respondent why it was demanding more payment and they have already made the entire payment of the unit . But it was replied that the area of the unit has been increased through 225 Sq ft to 319.61 Sq. ft. The respondent has paid the assured return on 225 Sq feet. If the respondent increased the super area, then in that situation it is also liable to pay balance assured amount return on the increased area.
14. That as per clause no. 19(b) of the terms and conditions of application form, it is clearly stipulated that in case the respondent abandon the project then it is liable to refund the entire amount along with interest @ 9% per Annum.
15. It is submitted that the complainants are senior citizens, and it is impossible for them to arrange day to day domestic and medical needs. As such, due to undue act and conduct of the respondent the complainants are being harassed and humiliated till date.

16. That the delay in completion of the project has taken place at its own wrong doings and for the deficiency on part of respondent.
17. That in view of the above facts and circumstances of the case, it is evident that from the date of booking till today the respondent is playing a game of cheating and fraud with complainants in order to grab their hard-earned amount. They purchased the unit with the hope that they are senior citizens and they would get the retirement pension from the respondent on monthly basis.
18. That the complainants sent a legal notice through counsel Vinay K. Sharma on 10.09.2020 regard to pay assured return @ Rs. 5,94,000/- from December 2017 to august 2020. It is also submitted that respondent neither handed over the possession of the said unit nor refunded the amount and even has not cleared the outstanding dues of the assured return till today.
19. That the complainants have many times approached the respondent- builder to know the status of the project and for assured return but it never gave any concrete reply leading to filing this complaint seeking refund and assured return of the deposited amount.

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

20. The complainants have sought the following relief(s):
- Direct the respondent – builder to refund of the paid up amount.
  - Direct the respondent – builder to pay balance assured return from December 2017 to till date as per the terms and conditions of the MOU.

- iii. Direct the respondent - builder to withdraw the illegal demand for a sum of Rs. 22,98,085/- of the increased area.

**D. Reply by respondent:**

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

21. That the complainants are allottees of the above-mentioned unit for a total sale consideration of Rs.20,25,000/- and had applied for allotment of a unit.
22. That the complainants made an application for provisional allotment of Office Space on 2<sup>nd</sup> or 3<sup>rd</sup> Floor, Tower B in the project developed by the respondent. One of the offers made by the respondent at that point of time was that the unit would have benefit of assured return till the notice for offer of possession and further shall have a benefit of assured return till the first lease subject to Force Majeure Conditions and other conditions mentioned in the MOU.
23. That the parties accordingly entered into an **MOU dated 14.03.2015** determining all the rights and liabilities. As per the Memorandum of Understanding, the price of the virtual unit for an area admeasuring 225 sq.ft. was Rs. 20,25,000/-.
24. That the complainants made payments of Rs. 21,00,087/- 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 additional cost, the complainants were also supposed to make other payments in the nature of Maintenance, Interest Free Maintenance Security (IFMS), Power Back up charges, service tax and such other levies/cessess /VAT as per the demands raised by



the respondent. It is submitted that the amount paid till date by the complainant is Rs. 21,00,087/- including service tax.

25. That there was no time limit provided under the MOU for handing over the possession of the unit. Thus, time was not the essence of the contract for delivering the possession, However it was mutually agreed upon that the complainant would be entitled to the benefit of assured returns/lease rental as per the terms of the MOU.
26. That the as per the terms of the **MOU**, it was also agreed that the respondent would pay assured return at the rate of Rs. 90/- per sq.ft of the super area till the issuance of notice of possession. After the notice of possession is issued till the receipt of LOI from the prospective Lessee, the developer would pay to the Allottee assured return @ Rs.67.50/- per sq. ft. of super area of the premises per month. However, the payment of assured return was subject to Force Majeure Clause as provided under Clause 7 of the MOU and other clauses of the MOU. Clause 7 of the MoU is reproduced herein:

7.1 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.

27. That from the above clause it is quite evident that the complainants were entitled to assured return subject to force majeure conditions in developing the said project. It is submitted that the construction and development of the project was affected due to force majeure conditions and the same are enumerated herein below:

- a) That on 19<sup>th</sup> February 2013 the office of the Executive Engineer, Huda Division No. II, Gurgaon vide Memo No. 3008-3181 had issued instructions to all Developers to lift tertiary treated effluent for construction purpose for **Sewerage Treatment Plant** Behrampur. Due to those instructions, the company faced the problem of water supply for a period of 6 months.
- b) Orders passed Hon'ble High Court of Punjab and Haryana wherein the Hon'ble Court **restricted use of groundwater in construction activity and directed use of only treated water available from sewer treatment plants**. However, there was no sewage treatment plant available which led to scarcity of water and further delayed the project. The said order coincided with launch of project and caused a huge delay in starting the project itself.
- c) That evidently there was lot of delay on part of government agencies in providing relevant permissions, licenses approvals and sanctions which resulted in inadvertent delay in the project constituting a force majeure condition. The delay caused in these permissions cannot be attributed to

respondent, for the very reason that it has been very prompt in making applications and replying to objections if any raised for obtaining such permissions.

d) It is pertinent to note here that despite the best efforts by respondent to hand over timely possession within the time period of said unit booked by complainants it could not do so due to reasons beyond its control.

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

i. That the sudden surge requirement of labour and removal created a vacuum for labour in NCR region. The projects of not only the respondent but also of all the other Developers/Builders have been suffering due to such shortage of labour and resulted in delays in the projects beyond the control of any of the developer.

ii. That in addition delay further resulted in increasing the cost of construction to a great extent. 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. That the said fact of labour shortage can be substantiated by way of newspaper articles elaborating on the above-mentioned issues hampering the construction projects in NCR. That this was certainly never foreseen or imagined by the opposite party while scheduling the construction activities. That it is submitted that 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. That the Ministry of environment and Forest and the Ministry of mines 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.** That 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. That the 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. That the sand used as a mixture along with cement for the same construction activities was also not available in the abundance as is required since mining department imposed serious restrictions against excavation of sand from Aravali region.
- vii. That the acute shortage of sand not only delayed the project of the respondent but also shot up the prices of sand by more than hundred percent causing huge loss to respondent.
- viii. That further due to delay in completion of the project and stalling various parts and agencies at work in advanced stages, the respondent had to redo, the said work causing huge financial burden on it , which has never been transferred to complainants or any other customer of project.



ix. That in addition the central Govt. has on 8<sup>th</sup> Nov. 2016 declared demonetization which severely impacted the operations and project execution on the site as the labour in absence of having bank accounts was 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 labour not accepting demonetized currency after demonetization.

x. It is submitted that in the year, 2012 on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) were regulated. The Hon'ble Supreme Court directed framing of Modern Mineral Concession Rules. The competent authorities took substantial time in framing the rules and in the process the availability of building materials including sand became scarce in the NCR as well as areas around it. Further, Developer was faced with certain other force majeure events including but not limited to non-availability of raw material due to various stay orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby stopping/regulating the mining activities, brick kilns, regulation of the construction and development activities



by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. That in addition to above, all the projects in Delhi NCR region were also affected by the blanket stay on construction every year during winters on account of AIR pollution which leads to further delay the projects. Such stay orders are passed every year either by Hon'ble Supreme Court, NGT or/and other pollution boards, competent courts, Environment Pollution (Prevention & Control) Authority.

- xi. That 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 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.

- xii. It is pertinent to mention here that delay has also been caused as the OC could not be issued since there was an order passed by the Hon'ble Punjab and Haryana in the matter titled as: Mukesh Sharma vs. State of Haryana and Ors. (CWP No. 23839 of 2014). The occupation certificate was held up on account of directions of Hon'ble Punjab and Haryana High Court wherein vide order dated 16.7.2015, the Hon'ble Court passed the following directions:

*"...However, no occupation certificate be issued in the sector/area or for the building where water supply connection has not been made available by HUDA..."*

- xiii. It is submitted that these directions were passed by the Hon'ble High Court in relation to Sectors 68-80, Gurgaon only. That the project in question falls in Sector 68, Gurgaon. Even as of today, the work of laying the pipeline for supplying water supply to Sector 68 is not complete to the knowledge of the respondent. However, the pumping



station at Wazirabad, Gurgaon after a lot of persuasion agreed to provide 5-7 water tankers every day to the respondent as a consequence of which an undertaking was filed by it before the authorities regarding company making its own arrangement for supply of water for commercial use et cetera.. It is only upon filing of this undertaking that why the memo dated 15<sup>th</sup> of January, 2019 the director, Town & Country planning Department issued occupation certificate for block A, ground floor to 2<sup>nd</sup> floor along with basements. It is relevant and important to mention here that the area of block A, ground floor to 2<sup>nd</sup> floor comprises mostly of retail units where the individual usage of water is minimal and otherwise also not much water as required, as there are limited common washrooms and for that water arranged from the Wazirabad pumping station by way of tankers was sufficient. Insofar as 3<sup>rd</sup>-floor to 12<sup>th</sup> floor of Tower A and Tower B are concerned, the water organized by the respondent was grossly insufficient and at that point of time there was no source of water supply provided by HUDA. The only possibility of getting water was from across the Sohna Road from the water supply of Sector 67.

At that time there was no possibility of getting permission for a road cut across Sohna road, the same being a busy highway. It is only when this part of Sohna Road came under the Delhi-Mumbai Swarnmala project and construction work was commenced by the authorities on the Sohna Road, that the company got an opportunity to lay down the pipeline across Sohna Road and the office of the Executive Engineer, HSVP, Gurgaon vide letter dated 21<sup>st</sup> of September 2018 granted permission for the same at the company's cost. The work for laying the pipeline was awarded to M/s Effizient Engineers, Gurugram vide the notice of award dated 6<sup>th</sup> of February 2019. Thus, once the pipeline was laid down and connected to the water supply of Sector 67 passing through Sohna Road, the respondent got Occupation Certificate dated 2<sup>nd</sup> of August 2019 for the balance units that is Tower A, 3<sup>rd</sup> floor to 12<sup>th</sup> floor, Tower B, ground floor to 5<sup>th</sup> floor. The facts detailed clearly demonstrate that no-fault can be attributed to the Respondent for the non-grant of occupation certificate, which was not granted on account of the orders aforesaid passed by the Hon'ble Punjab and Haryana High Court in CWP number 23839 of 2014 titled as: Mukesh Sharma

versus State of Haryana and others, which was finally dismissed for non-prosecution vide order dated 5th of March, 2019,

28. That it is pertinent to mention here that the respondent despite facing the above Force Majeure Conditions has already paid the Assured Return to the tune of Rs. 6,07,500/- till November 2017. The payment of the Assured Return was stopped in the December 2017 solely for the Force Majeure Conditions which is still continuing i.e. COVID 19 Pandemic. It is submitted that this Hon'ble Authority vide its order dated 26.05.2020 invoked the force majeure clause. The complainants are also liable to make other payments as prescribed under the MOU.
29. That the respondent after completing the construction had applied for the issuance of Occupation Certificate with the Director General, Town & Country Planning Department, Haryana vide application dated 28<sup>th</sup> of March, 2018. It is submitted that the OC was granted on 02.08.2019 after due verification and inspection.
30. That after the receipt of the OC, the respondent vide letter dated 19.08.2020 offered the possession of unit ( K-08) on second floor, B Block, to the Complainants. From the facts as narrated above it become quite evident that despite the Tower/unit of the complainant being complete in all respect, the respondent could not offer possession of the unit due to Force majeure conditions as detailed above. 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.

31. That once the project is complete and Occupation Certificate has been granted on 02.08.2019, then no case of refund is made out. It is further submitted that if refund is allowed, other buyers/customers who have invested their hard earned money in the project would suffer irreparable loss and it would never be made fully occupied if such an approach continues. Thus, to protect the interest of one person, authority can't jeopardize the interest of others who are genuine purchasers and are not mere speculators.

32. All other averments made in the complaint were denied in toto.

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

**E. Jurisdiction of the authority:**

34. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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**

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 complete territorial jurisdiction to deal with the present complaint.

**E. II Subject matter jurisdiction**

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

**Section 11**

.....

(4) The promoter shall-

*(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 promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

36. 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 the compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

37. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2020-2021 (1) RCR (c) 357*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India***

**& others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022** wherein it has been laid down as under:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

38.36. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

**F. Findings on the objections raised by the respondent**

**F.I Objection regarding force majeure**

39. While entering into MOU dated 27.10.2014 clause 7.1 is with regard to suspension of payment of assured returns due to force majeure conditions. Secondly it is pleaded that there was delay in completion of the project due to ban on use of ground water for construction activities in view of orders passed by the Hon'ble High Court, delay in giving necessary approvals for proceeding with the project, implementation of various social schemes by govt. of India resulting in shortage of labour in the NCR, non-availability of

construction material such as bricks , sand , demonetization , stoppage of mining activities , introduction of GST in July 2017 , pendency of a writ petition resulting in delay in issuance of occupation certificate etc. But all the pleas advanced in this regard are devoid of merit. No doubt the respondent had to suspend payment of assured returns for some time but benefit for whole of the period can't be given to it. Then the conditions mentioned with regard to delay in completion of the project are of routine nature and a promoter is required to take the same into consideration while launching the same. there may be some circumstances beyond the control of the respondent resulting in delay in completion of the project but due date for completion as per MOU / terms and conditions for registration mentioned in clause 19 was thirty six months from the date of approval of building plans or signing of the buyer's agreement whichever was later . In the case in hand there is no buyer's agreement executed between the parties and so MOU entered into is being treated as such and the due date is calculated for completion of the project and offering of possession as 27.10.2017. Thus, the plea with regard to force majeure conditions hampering the completion of the project cannot be accepted and is untenable.

**G. Findings on the relief sought by the complainants:**

**G.I Direct the respondent – builder to refund the paid up amount.**

**G.II. Direct the respondent – builder to pay balance assured return from December 2017 to till date as per the terms and conditions of the MOU.**

40. Both the issues being interconnected are being taken together.

41. Some of the admitted facts of the case are that the complainants are allottees of subject unit being allotted to them on the base of terms and conditions for registration as well as memorandum of understanding entered into between the parties for a total sale consideration of Rs. 20,25,000/-. In pursuant to that the complainants paid a sum of Rs. 21,00,087 /- to the respondent. Though a buyer's agreement with regard to the allotted unit was to be executed between the parties but the same did not see the light of the day . So in the absence of that document, the authority is relying upon the MOU as well as terms and conditions for registration of the unit entered into between the parties
42. A perusal of clause 1.1 of MOU shows that the complainants were allotted the unit measuring approximately 225 sq. ft. located in the restaurant area either on the second floor or third floor block B of the project and its area was subject to increase or decrease at the time of completion / offer of possession . So the plea of complainants that the area of the allotted unit was unilaterally changed is unattainable . They are liable to pay to the respondent for increase in the area of the allotted unit as per terms and conditions of allotment contained in the MOU.
43. There is clause 3 under article 3 of MOU providing for payment of assured return of the unit and before proceeding further , a reference to the same is must providing as under :-

*3.1 Till the notice for offer of possession is issued, the Developer shall pay to the Allottee an Assured Return at the rate of Rs. 90/- (Rupees Ninety Only) per sq. ft. of super area of premises per month. After the notice for offer of possession is issued till the receipt of LOI from the Prospective lessee, the developer shall pay to the Allottee (s) an Assured Return @ Rs. 67.50 (Rupees Sixty-seven & Paisa Fifty Only) per sq. ft. of super area of premises per month (hereinafter referred to as the 'Assured return'). No rental is payable for rent free period granted to Lessee for*



*interior work and furnishing of unit of Allottee as per standard market practice. The assured return shall be subject to tax deduction at source, which shall be payable on quarterly basis on due date of every quarter on due basis.*

*3.2 The developer shall pay the Assured Return till the notice of possession as mentioned hereinabove, however after receipt of LOI from the Prospective lessee, the developer shall cease to pay any return to Allottee and the Allottee shall receive all the rents/ Security deposit directly from the intending lessee. It is clarified, in case the rental to be received from prospective lessee is less than the rental agreed by developer as per clause 3.1, the developer shall pay the difference amount of rentals to Allottee for lock in period or 36 months, whichever is earlier. Similarly, the Allottee also undertake and confirm that if the rental received from prospective lessee is more than the agreed rental, the Allottee shall promptly pay the differential rental to developer.*

*3.3 Subsequent to execution of LOI with the lessee and after receipt of balance consideration and charges a Sale/ Conveyance Deed shall be executed shall be executed as per terms of this MoU and the Buyer Agreement in favour of the allottee.*

*3.4 The Developer shall pay to the Allottee assured rental from the date of execution of this MoU till the receipt of LOI from the Prospective lessee as per agreed rate of return as per the clause 3.1. The security deposit, if any received from the Lessee shall be passed on by the Developer to the Allottee in case same has been paid by the Lessee to the Developer. The Developer shall not retain any part of the Security deposit.*

*3.5 In the event, the lessee makes payment of the Lease Rent to Developer after execution of the LOI; the Developer shall promptly remit the same to Allottee. In the event the Lessee makes payment of the Lease Rent to the Allottee after execution of the LOI and the Developer has inadvertently paid any return to the Allottee, the Allottee shall remit the same to Developer forthwith.*

44. It is evident from a perusal of the above that the developer was liable to pay to the allottees assured return @ Rs/. 90/- per sq. ft. per month of super area of the premises till notice for offer of possession is issued and @ Rs67.50 paisa per sq. ft. of the super area of the premises per month till receipt of LOI from the prospective lessee. The payment of amount in this regard as agreed upon November 2017 .to the tune of Rs. 6,07,500 /- is not disputed. It is also a fact that the occupation certificate of the project was

received on 02.08.2019 and on the basis of which the offer of possession of the allotted unit was made to the complainants vide letter dated 19.08.2020. Though the respondent took a plea with regard to nonpayment of amount to the complainants on the basis of some force majeure conditions but in view of findings recorded in the preceding paras, the plea raised in this regard is not tenable. So as per commitment made by the developer to the complainants in view of article 3 of the MOU it is liable to pay to them the arrears of assured return w.e.f December 2017 to 19.08.2020 @ Rs. 90 per sq. ft. per month of the super area of the unit. Similarly, the promoter is also liable to pay the allottees the arrears of assured return w.e.f 20.08.2020 @ Rs. 67.50 per sq. ft. per month of the super area of the unit till the receipt of letter of intent (LOI) from the prospective lessee.

45. Now the question for consideration arises as to whether the complainants are entitled for refund of the paid up amount in view of terms and conditions of MOU / registration of the unit entered into between the parties.
46. The total sale consideration of the allotted unit as per the MOU executed between the parties was agreed upon as Rs. 20,25,000/- at the rate of Rs. 9000/- per sq. ft. excluding IDC, IFMC, EDC, Power backup charges, Service Tax, VAT and such other levies of cesses as maybe imposed by any statutory authority. The complainants admittedly paid a sum of Rs. 21,00,087/- as sale consideration by way of account pay cheques dated 28.12.2014, 31.12.2014, 05.03.2015, 10.03.2015 and 13.03.2015 respectively. There is also a provision for payment of assured return against the allotted unit and a sum of Rs. 60,75,000/- has admittedly been paid to the

allottees up to November 2017 . There is no mention with regard to giving of physical possession of the allotted unit to the allottees in the MOU executed by the parties but clause 19 of the terms and conditions for registration provides a period of 36 months for offering possession from the date of execution of buyer's agreement or building plan approvals whichever is later . Though the date for approval of building plans is 11.07.2012 but buyer's agreement with regard to the unit was not executed between the parties and so MOU entered into between them on 27.10.2014 is being treated as such and the due date in such a situation for completion for the project and offer of possession comes to 27.10.2017. It is contended on behalf of respondent that the possession of the allotted unit was never to be offered to the allottees and there was provision of only virtual/symbolic possession as per article 3 of the MOU. But the plea advanced in tis regard is not tenable. The complainants booked a unit and as per terms and conditions of registration, the possession of the allotted unit was to be offered to them not later than 36 months from the date of approval of building plans or signing of the buyer's agreement. Admittedly no buyer's agreement was executed between the parties and the approval of the building plans was received on 11.07.2012. So, treating the date of MOU dated 27.07.2014 as of buyer's agreement, the due date comes to 27.07.2017. Since the promoter was unable to complete the project by that date and offer possession of the allotted unit, so a right to the allottees seeking refund accrued therein.

47. The due date for completion of the project and offer of possession of the allotted unit comes to 27.07.2017. The occupation certificate

of the project was received on 02.08.2019 and the allotted unit was offered for possession on 19.08.2020. Up to that time the complainants did not withdraw from the project and continued with the same. They sent a legal notice dated 10.09.2020 to the respondent seeking arrears of assured return and leading to filing of the complaint on 01.03.2021 seeking refund of the paid up amount besides interest. Since the complainants never exercised an option to withdraw from the project and sought refund either after the due date or before receipt of occupation certificate and offer of possession, so their claim seeking refund of the paid up amount from the respondent is not maintainable and are entitled to receive assured return as agreed upon besides possession of the allotted unit on payment of remaining dues less the amount already received and to be adjusted in the shape of assured returns up to the date of offer of possession within a period of two months. In case, the claimants fail to avail that remedy within that period, then the respondent would be at liberty to proceed against them offering refund of the paid up amount after making deductions of the 10% of the total sale consideration of the allotted unit. The complainants have availed the remedy of seeking refund of the paid-up amount.

48. Thus, keeping in view the aforesaid factual and legal provisions, the respondent cannot retain the amount paid by the complainants against the allotted unit and is directed to refund the same in view of the agreement to sell for allotment by forfeiting the earnest money which shall not exceed the 10% of the basic sale consideration of the said unit and shall return the balance amount along with interest at the rate of 10.70% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date

+2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of filing of the complaint i.e., 01.03.2021 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

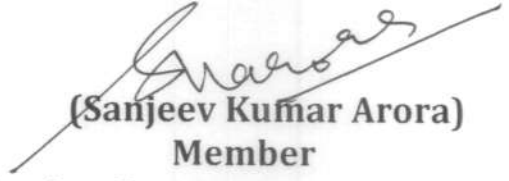
**H. Directions issued the Authority:**

49. 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 functions entrusted to the Authority under section 34(f) of the Act of 2016:

- i. The respondent is directed to refund to the complainants the paid-up amount of Rs.21,00,087/- after deducting 10% as earnest money of the total sale consideration of Rs.20,25,000/- with interest at the prescribed rate i.e., 10.70% is allowed, from the date of filing of the complaint minus the amount already received by them by way of assured return

50. Complaint stands disposed of.

51. File be consigned to the Registry.

  
(Sanjeev Kumar Arora)  
Member

**Haryana Real Estate Regulatory Authority, Gurugram**

**Dated: 05.05.2023**

