

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

Complaint no.	:	323/2023
Date of filing complaint:		02.02.2023
First date of hearing:		02.08.2023
Date of decision	:	21.02.2024

Rohin Arora Resident of: M-193, Park Towers, DLF Park Place, Golf Course Road, DLF Phase V, Sector 54, Gurugram.	Complainant
Versus	
M/s Vatika Ltd Regd. office: Unit no. A002, INXT City Centre Ground Floor, Block A, Sector 83, Vatika India Next Gurugram-122012.	Respondent

CORAM:	
Shri Ashok Sangwan	Member
APPEARANCE:	
Mr. Vinay Yadav Advocate	Complainant
Ms. Ankur Berry Advocate	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee 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 provisions 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 the project, the details of sale consideration, the amount paid by the complainants, the date of proposed handing over of the possession, and the delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	Vatika INXT City Centre at Sector 83, Gurugram, Haryana
2.	Project area	10.48 acres
3.	Nature of the project	Commercial complex
4.	DTCP license no. and validity status	122 of 2008 dated 14.06.2008 Valid up to 13.06.2016
5.	Name of licensee	Trishul Industries
6.	RERA Registered/ not registered	Not registered
7.	Unit no.	COM-012-Tower-E-3-330 (Page no. 47 of complaint)

8.	Unit area admeasuring	500 Sq. Ft.
9.	Date of execution of BBA	10.04.2010 (Page no. 20 of complaint)
10.	Possession clause	<p>Clause 2</p> <p><i>"The developer will complete the construction of the said complex within 3 years from the date of execution of this agreement"</i></p> <p>However, the said clause was sought to be deleted by clause 3 of the addendum agreement dated 12.12.2019. The Authority finds the aforesaid deletion of schedule of completion of construction as arbitrary, hence void. (Detailed reasoning given in para 22-23)</p>
11.	Due date of possession	10.04.2013
12.	Assured return	Annexure A to agreement dated 10.04.2010

	<p>The unit has been allotted to you with an assured monthly return of Rs.65/- per sq.ft. However, during the course of construction till such time the building in which your unit is situated is ready for possession you will be paid an additional return of Rs.13/- per sq. ft. Therefore, your return payable to you shall be as follows:</p> <p>This addendum forms an integral part of builder buyer Agreement dated 10/04/10.</p> <p>A) Till Completion of the building : Rs.78/- per sq.ft.</p> <p>B) After Completion of the building : Rs.65/- per sq.ft.</p> <p>You would be paid an assured return w.e.f 10/04/10 on a monthly basis before the 15th of each calendar month.</p> <p>The obligation of the developer shall be to lease the premises of which your flat is part @ Rs.65/- per sq.ft. In the eventuality the achieved return being higher or lower than Rs.65/- per sq.ft. the following would be applicable.</p> <ol style="list-style-type: none">1. If the rental is less then Rs 65/- per sq.ft. then you shall be refunded Rs 120/ per sq.ft. for every Rs.1/- by which achieved rental is less then Rs.65/- per sq.ft.
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2. If the achieved rental is higher than Rs.65/- per sq.ft. than 50% of the increased rental shall accrue to you free of any additional sale consideration. However, you will be requested to pay additional sale consideration @ Rs 120/- sq.ft. for every rupee of additional rental achieved in the case of balance 50% of increased rentals.

The said annexure A was deleted by clause 3 of the Addendum agreement dated 12.12.2019, and was replaced by clause 2 of the said addendum agreement.

Clause 2 of addendum agreement dated 12.12.2019

"2. Notwithstanding anything to the contrary contained in the said Agreement and upon reconciliation of the accounts of the Allottee, any amount due and payable to the Allottee/Allottees by the Developer, including amounts payable under Annexure 'A' (to the Letter dated 12- Apr 2010) through which the payments payable under Clause 2 (Sale Consideration) were amended and Clause 32 (Leasing

		<i>Arrangement) upto 30th June 2019, shall be settled and payable at the time of leasing of the Unit or within ninety from the date of execution of the present Addendum Agreement whichever is earlier.</i>
13.	Basic sale consideration	Rs. 20,00,000/- (Page no. 23 of complaint)
14.	Amount paid by the complainants	Rs. 20,00,000/- (Page no. 23 of complaint)
15.	Occupation certificate /Completion certificate	Not obtained
16.	Offer of possession	Not offered
17.	E-mail for suspension of assured returns	31.10.2018 (Page no. 37 of reply)

B. Facts of the complaint:

- The respondent had advertised widely that their upcoming Vatika Trade Centre project, Gurgaon, Haryana was a state-of-the-art project being one of its kind with all modern amenities and facilities.

4. The officials and brokers employed by the respondent made lucrative representations to the complainant and assured him that buying a unit in the project would be a good return on investment. Their agents further assured the complainant that they would get assured return till the possession is handed over to the complainant.
5. On the basis of these representations, on 12.03.2010 the complainant filled a pre-printed application form and paid the booking amount of Rs. 2,00,000/- and booked a commercial unit ad measuring 500 sq.ft. area @ Rs. 4000/-.
6. Accordingly, a builder buyer agreement dated 10.04.2010 was executed between the complainant and the respondent which specified the terms and conditions of the booking and allotment of unit of the complainant. Some of the clauses in the buyer's agreement, that the complainant was made to sign by the respondent, were completely one-sided. The complainant had to sign already prepared documents and that some of the clauses contained therein were totally unreasonable and were in favour of the respondent only.
7. An addendum to the agreement dated 10.04.2010 was also executed between the respondent and the complainant which specified that the respondent was liable to pay monthly assured returns to the complainant, calculated @Rs. 78/- per sqft. per month till the completion of the building and would then be liable to pay monthly assured returns calculated @ Rs. 65.00/- per sq.ft. per month to the complainant post completion of the building.

8. As per the terms contained in clause 2 of the buyer's agreement, the respondent had promised to handover the possession of the said unit within a period of three years from the date of execution of the agreement.
9. The respondent unilaterally issued letter dated 17th September 2013 to the complainant changing the location of the project where the unit of the complainant was booked. The complainant was subsequently and unilaterally allotted unit no. 330 in block E of the project "Vatika Inxt City Centre", located at Sector 83, Gurgaon. The complainant has paid the complete amount of sales consideration at of Rs. 20,00,000/- before the signing of the builder buyer agreement.
10. That the respondent in complete defiance of the builder buyer agreement stopped paying the assured return to the complainant from October 2018 onwards even though the construction of the said project was not complete and the possession was not handed over to the complainant.
11. That when the complainant approached the respondent company to know about the payment of assured return, the respondent maliciously approached the complainant with an offer to clear the arrears of assured returns on the condition that the complainant would execute an addendum agreement whereby the complainant will have to forego any and all rights accrued in its favour as per clause 32 of the BBA. Furthermore, additional obligations were imposed on the complainant if the unit had to be leased.
12. The complainant was coerced into signing the said addendum dated 12.12.2019 on the condition of payment of arrears of assured

returns and on the misinformation that the building had received a completion/occupation certificate from the competent authority and had no option to modify the said agreement.

13. That the respondent has not offered the possession of the unit to the complainant and has further stopped responding to his communications and has failed to apprise him regarding the true and correct status of the project and where his unit is located. The respondent further refused to pay the monthly assured return/minimum guaranteed rent to the complainant.

C. Relief sought by the complainants:

14. The complainants have sought the following relief(s):
- i. That the addendum dated 12.12.2019 be declared null and void.
 - ii. Direct the respondent to pay the complainant the monthly assured returns.
 - iii. Direct the respondent to pay interest at prevailing rate on the amount paid by the complainant.
 - iv. Direct the respondent to execute the conveyance deed of the unit in complainant's favor.

D. Reply by the respondent.

15. The present complaint is not maintainable nor tenable in the eyes of law. The complainant has misdirected himself in filing the above captioned complaint before this Ld. Authority as the reliefs being claimed by the complainant cannot be said to fall within the realm of jurisdiction of this Ld. Authority.

16. Upon the enactment of the Banning of Unregulated Deposit Schemes Act, 2019, the 'Assured return' and/or any "Committed returns" on such kind of schemes have been banned. The respondent company in view of the provisions of BUDS Act cannot run, operate, continue an assured return scheme. The implications of enactment of BUDS Act read with the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014, resulted in making the assured return/committed return and similar schemes as unregulated schemes as being within the definition of "Deposit".
17. That as per section 3 of the BUDS Act, all unregulated deposit scheme has been strictly banned and deposit takers such as builders, cannot, directly or indirectly promote, operate, issue any advertisements soliciting participation or enrolment in; or accept deposit. Thus, the section 3 of the BUDS Act, makes the assured return schemes of the builders and promoter, illegal and punishable under law.
18. Further as per the Securities Exchange Board of India Act, 1992 the collective investment schemes as defined under Section 11 AA can only be run and operated by a registered person/company. Hence, the assured return scheme of the respondent company has become illegal by the operation of law and the respondent company cannot be made to run a scheme which has become infructuous by law. Thus, the present complaint deserves to be dismissed, without wasting precious time of this Hon'ble Authority.

E. Jurisdiction of the authority:

19. The plea of the respondent regarding the rejection of the complaint on the grounds 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 the entire Gurugram District for all purposes 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

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the 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 with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.

20. So, given 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 complainants at a later stage.

F. Findings on relief sought by the complainants.

F.I That the addendum dated 12.12.2019 be declared null and void.

21. The complainant contends that the addendum agreement dated 12.12.2019 be declared null and void as the same is one-sided and arbitrary.
22. On perusal of the said addendum agreement dated 12.12.2019, the Authority is of the view that the said agreement is duly stamped and signed by the complainant, further nothing material has been brought on record that suggests any coercion or foul play.
23. The addendum agreement primarily aimed at changing three terms of the original buyer's agreement dated 10.04.2010 viz. payment of assured return, leasing arrangement, and the schedule of possession. On perusal of said agreement and the terms contained therein, the Authority is of the view that while part of the said agreement is legal and valid (Payment of assured return and Leasing arrangement), there is some aspect of the agreement that is arbitrary and creates ambiguity (Deletion of clause of schedule of possession/completion of construction), and therefore invalid. Accordingly, the Authority determines the treatment of said issues as follows:

a) Payment of Assured return and leasing arrangement:

Clause 3 of the addendum agreement dated 12.12.2019 deleted

clause 2 of the original buyer's agreement dated 10.04.2010 whereby the complainant was promised assured return. Clause 2 of the buyer's agreement dated 10.04.2010 is reproduced below:

"2. The Developer will complete the construction of the said complex within three (3) years from the date of execution of this agreement. Further, the Allottee has paid full sale consideration on signing of this agreement, the Developer further undertakes to make payment as per Annexure A per sq ft of super area per month by way of committed return for the period of construction, which the Allottee duly accepts. In the event of a time overrun in completion of the said complex the Developer shall continue to pay to the Allottee the within mentioned assured return until the unit is offered by the Developer for possession."

Clause 3 of the addendum agreement dated 12.12.2019 is reproduced below:

3. W.e.f 1st July 2019, Clause 2 (Sale Consideration) of the said Agreement stands amended as below:

The last paragraph of Clause 2 (Sale Consideration) *"The Developer will completeuntil the Unit is offered by the Developer for possession"* and the Annexure 'A' to the Letter dated 12- Apr 2010 amending the Clause 2 (Sale Consideration) of the Builder Buyer Agreement stand deleted.

While the said clause ended the respondent's liability to pay assured returns, simultaneously clause 2 of the addendum agreement provided the new arrangement for payment of assured return. Said clause is reproduced below:

"2. Notwithstanding anything to the contrary contained in the said Agreement and upon reconciliation of the accounts of the Allottee, any amount due and payable to the Allottee/Allottees by the Developer, including amounts payable under Annexure 'A' (to the Letter dated 12- Apr 2010) through which the payments payable under Clause 2 (Sale Consideration) were amended and Clause 32 (Leasing Arrangement) upto 30th June 2019, shall be settled and payable at the time of leasing of the Unit or within ninety from the date of execution of the present Addendum Agreement whichever is earlier.

As per the aforesaid clauses, the annexure A to the buyer's agreement dated 10.04.2010 was deleted and was replaced by clause 2 and 4 of the addendum agreement dated 12.12.2019, and since the said agreement was duly signed and stamped, the Authority finds this new arrangement to be valid. Furthermore, as per the new arrangement, the respondent was to pay assured returns only up to 30.06.2019, and the same was payable at the time of leasing of the unit or within ninety from the date of execution of the present addendum agreement whichever is earlier.

b) Deletion of clause of schedule of possession/completion of construction by clause 3 of the addendum agreement:

The clause 3 of the addendum agreement deleted clause 2 of the buyer's agreement dated 10.04.2010 entirely, and since the said clause 2 contained schedule for completion of construction of unit, the complainant is left in an abyss with no date for possession. Clause 3 of addendum agreement is reproduced below:

3. W.e.f 1st July 2019, Clause 2 (Sale Consideration) of the said Agreement stands amended as below: A A A

The last paragraph of Clause 2 (Sale Consideration) "The Developer will completeuntil the Unit is offered by the Developer for possession" and the Annexure 'A' to the Letter dated 12- Apr 2010 amending the Clause 2 (Sale Consideration) of the Builder Buyer Agreement stand deleted.

The drafting of this clause and incorporation of such conditions are not only vague and uncertain but heavily loaded in favour of the promoter and against the allottee. The incorporation of such clause in the agreement by the promoter is just to evade the

liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

The arrangement regarding schedule of possession which the clause 3 of addendum agreement seeks to create is extremely arbitrary and results in a lot of ambiguity. Furthermore, while the respondent deleted the schedule of possession, it failed to mention any new arrangement for possession/construction of subject unit. Therefore, relying on doctrine of severability, it is the view of this Authority that clause 3 of the addendum agreement is only partly valid so far as it creates new arrangement for payment of assured returns and leasing, and the portion of the said clause that seeks to delete the schedule of possession is invalid.

F.II The common issues with regard to assured return, delay possession charges and execution of conveyance deeds are addressed together.

A. Assured return

24. The complainant is seeking unpaid assured returns on monthly basis as per Annexure A of the agreement dated 10.04.2010 at the rates mentioned therein. It is pleaded that the respondent has 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 respondent refused to pay the same by taking a plea that the same is not payable in view of enactment of the Banning of Unregulated Deposit Schemes Act, 2019 (hereinafter referred to as the Act of 2019), The authority has rejected the aforesaid objections raised by the respondent in **CR/8001/2022 titled as Gaurav Kaushik and anr. Vs. Vatika Ltd.** wherein the authority has held that when payment of assured returns is part and parcel of builder buyer's agreement (maybe 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 the Act of 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per section 2(4)(i)(iii) of the Act of 2019. Thus, the plea advanced by the respondent is not sustainable in view of the aforesaid reasoning and case cited above.

25. 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 its failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of her grievances by way of filing a complaint.
26. 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 defines the builder/buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the original agreement for sale.

27. It is not disputed that the respondent is a real estate developer, and it had not obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the latter from the former against the immovable property to be transferred to the allottee later on.
28. However, it has been brought on record and as already discussed above that both parties entered into an addendum agreement whereby the payment of assured returns was limited up till 30.06.2019 only.

B. Delay possession charges

29. In the present complaint, the complainant intends to continue with the project and is seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which reads as under:

*"Section 18: - Return of amount and compensation
18(1). If the promoter fails to complete or is unable to
give possession of an apartment, plot, or building, —*

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

30. A builder buyer agreement dated 10.04.2010 was executed between the parties. The due date is calculated as per clause 2 of the said agreement. As per clause 2, the flat was to be completed within a period of 3 years from the execution of the said agreement. The said clause is reproduced below is reproduced below:

"iv. "The developer will complete the construction of the said complex within 3 years from the date of execution of this agreement"."

31. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."

32. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 21.02.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

33. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.
Explanation. —For the purpose of this clause—
the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;
the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

34. On consideration of documents available on record and submissions made by the complainant and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The agreement executed between the parties on 10.04.2010, the possession of the subject unit was to be delivered within stipulated time i.e., 10.04.2013.

35. However now, the proposition before it is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges?
36. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the BBA or an addendum to the BBA. The assured return in this case is payable as per "clause 2 of the addendum agreement dated 12.12.2019". The rate at which assured return has been committed by the promoter is Rs. 78/- per sq. ft. of the super area per month (Till the completion of the building) and at Rs. 65/- per sq. ft. (After completion of the building) which is more than reasonable in the present circumstances. If we compare this assured return with delayed possession charges payable under proviso to section 18(1) of the Act, 2016, the assured return is much better i.e., assured return in this case is payable at Rs. 39,000/- per month (Till completion of building) whereas the delayed possession charges are payable approximately Rs.18,083/- per month. It has been the view of this Authority that the complainant shall be paid either assured return or delay possession charges whichever is higher without prejudice to any other remedy including compensation. However, it is important to note that the assured return is to be paid only till 30.06.2019 due to the new

arrangement created by the addendum agreement dated 12.12.2019. By way of assured return, the promoter had initially assured the allottee that he would be entitled for this specific amount. But since the arrangement changed, the complainant shall not be eligible for assured return post 30.06.2019.

37. Since the promoter is still using complainant's money and would stop payment of assured return, the complainant would have no remedy left, therefore to safeguard the interests of the allottees, it is the view of this Authority that the complainant shall be paid assured return till 30.06.2019, and thereafter he shall eligible for delay possession charges at the prescribed rates.
38. On consideration of the documents available on the record and submissions made by the parties, the complainant has sought the amount of unpaid amount of assured return as per the terms of BBA along with interest on such unpaid assured return. Since the creation of new arrangement by the addendum agreement, the complainant is not eligible for assured return post 30.06.2019. The BUDS Act of 2019 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.
39. In the present complaint, admittedly, the OC/CC for that block wherein the subject unit is situated has not been received by the promoter till this date. The authority is of the view that the

construction cannot be deemed to complete until the OC/CC is obtained from the concerned authority by the respondent promoter for the said project. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return at the agreed rate as per the terms of the clause 2 of the addendum agreement.

40. The respondent is directed to pay the outstanding accrued assured return amount along with interest till 30.06.2019 at the agreed rate after deducting the amount of assured return already paid within 90 days from the date of this order and after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @ 8.85% p.a. till the date of actual realization. Post 30.06.2019, the respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 10.85% p.a. for every month of a delay from the due date of possession i.e. 10.04.2013 till the offer of possession plus two months, as per section 18(1) of the Act of 2016 read with rule 15 of the Rules.

G.II Direct the respondent to execute the title documents in complainant's favour.

41. Section 17 (1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title. -

- (1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may*

be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

42. The authority observes that OC in respect of the project where the subject unit is situated has not been obtained by the respondent promoter till date. As on date, the conveyance deed cannot be executed in respect of the subject unit, however, the respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. In view of above, the respondent shall execute the conveyance deed of the allotted unit within 3 months from the date of receipt of the OC from the concerned authority upon payment of requisite stamp duty by the complainant as per norms of the state government.

H. Directions issued by the Authority:

43. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with 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 handover constructive possession of the unit on obtaining the occupation certificate.
- II. The respondent is directed to pay the amount of assured return at the agreed rate as per clause 2 of the addendum agreement. The amount of Assured return already paid i.e. Rs.39,20,800/- by the respondent to the complainant shall be deducted before paying the residual Assured return.
- III. The respondent is directed to pay the outstanding accrued assured return amount with rate of interest 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 that amount would be payable with interest @ 8.85% p.a. till the date of actual realization.
- IV. Post 30.06.2019, the respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 10.85% p.a. for every month of a delay from the due date of possession i.e. 10.04.2013 till the date offer of possession plus two months, as per section 18(1) of the Act of 2016 read with rule 15 of the Rules.
- V. The arrears of such interest accrued from 30.06.2019 till the date of order by the Authority shall be paid by the promoter to the allottees within a period of 90 days from the date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per rule 16(2) of the rules;

- VI. The respondent shall execute the conveyance deed of the allotted unit within the 3 months from the date of receipt of the OC from the concerned authority upon payment of requisite stamp duty as per norms of the state government.
- VII. The respondent shall not charge anything from the complainant which is not the part of the builder buyer agreement.
44. Complaint stands disposed of.
45. File be consigned to the Registry.


Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.02.2024

HARERA
GURUGRAM