BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**7769 of 2022**
Date of filing	**:**	**22.12.2022**
Order Reserve On	**:**	**05.01.2024**
Order Pronounced On:		**22.03.2024**

Usha Mohan R/o: D-12, Pushpanjali, Bijwasan, New Delhi-110061	**Complainant**
Versus	
M/s Neo Developers Pvt. Ltd. Office: 32-B, Pusa Road, New Delhi-110005.	**Respondent**
CORAM:	
Shri Sanjeev Kumar Arora	**Member**

APPEARANCE:	
Shri Harshit Goyal	**Complainant**
Shri Gunjan Kumar	**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 allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S.n	Particulars	Details
1.	Name of the project	"Neo Square", Sector-109, Gurgaon
2.	Nature of the project	Commercial Complex
3.	DTCP License no.	102 of 2008 dated 15.05.2008 valid upto 14.05.2024
4.	**RERA registered/not registered**	Registered vide registration no. 109 of 2017 dated 24.08.2017
	Validity status	22.02.2022
5.	Date of MOU	01.12.2012 [page no. 15 of complaint]
6.	Unit No.	704, 7th floor [page no. 16 of complaint]
7.	Area admeasuring	1000 sq. ft. [page no. 16 of complaint]
8.	Assured return clause	1. *That the Company hereby has agreed to allot to the Allottee(s) premises measuring 1000 sq. ft. (92.90 Sq. Mtr.) super built up area on the Seventh floor of Tower of the said Project. The Allottee(s) has opted for the 'Investment Return Plan' and has agreed that the basic consideration for allotment of the premises is to be determined at Rs. 4500/- per sq. ft. taking into consideration a return*

		of Rs. 71.34/- per sq. ft. per month, subject to the terms of this MOU.
9.	Assured return paid by the respondent to complainant	Rs. 55,64,520/- [As per statement of account on page no. 52 of reply].
10.	Final reminder letter	05.11.2020 (page no. 53 of reply)
11.	Total sale consideration	Rs. 63,76,498/- (As per statement of account on page no. 52 of reply) Rs. 45,00,000/- (As per MOU on page no. 20 of complaint)
12.	Total amount paid by the complainant	Rs. 49,87,527/- (As per statement of account on page no. 52 of reply)
13.	Occupation certificate	NA
14.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions:

4. That the memorandum of understanding agreement was duly executed between the allottee and the respondent on 01.12.2012 in respect of booked unit no 704, 12th Floor in real estate project namely Neo Square.

5. That as per clause 3 of MOU agreement dated 01.12.2012, the respondent company was liable to pay assured return amount of Rs 71.34/- per sq ft per month till the date of execution of first Lease of the booked unit. The respondent company has failed to pay any assured return amount from March 2019 till date to the complainant.

6. That the respondent company was also liable to deliver possession of the booked unit within a period of 36 months from the date of execution of agreement. Therefore, the due date of delivery of possession was 01.12.2015. However, the respondent has failed to offer lawful and legal possession of the booked unit along with occupation certificate to the complainant till date.

7. That the demand letter dated 29.06.2022 demanding Rs 14,12,114/- from the complainant is unlawful and unjustified as the complainant has already paid total sale consideration to the respondent company. The respondent company has also intentionally failed to attach statement of accounts with the said demand letter.

8. That the complainant has already paid total sale consideration in respect of booked unit as and when demanded by the respondent company.

9. That the complainant had invested his hard-earned money in the booking of the unit in the project in question on the basis of false promises made by the respondent at in order to allure the complainant. However, the respondent has failed to abide all the obligations of him stated orally and under the builder buyer agreement duly executed between both the present parties.

10. Therefore, the present complainant is forced to file present complaint before this Hon'ble authority under Section 31 of Real Estate Regulation and Development Act, 2016 read with Rule 28 of Haryana Real Estate (Regulation and Development) Rules, 2017 to seek redressal of the grievances against the respondent company.

C. Relief sought by the complainant:

11. The complainant has sought following relief(s).

i. Direct the respondent to pay pending monthly assured return of Rs. 71.34/- per sq. ft (Rs 71,340 per month) accrued from the March 2019 along with interest to the complainant.

ii. Direct the respondent to pay delayed possession charges from due date of delivery of possession of 01.12.2015 till date of offer of possession along with occupation certificate of booked unit.

iii. Direct the respondent to execute and register the conveyance deed of the booked unit.

D. Reply by the Respondent:

12. That the complainant with the intent to invest in the real estate sector as an investor, approached the respondent and inquired about the project i.e., "Neo Square", situated at sector-109, Gurugram, Haryana being developed by the respondent. The complainant apply by submitting a booking application form dated 10.05.2012, whereby seeking allotment of priority no. 704, admeasuring 1000 sq. ft. super area on the 7th floor restaurant/food court space of the project having a basic sale price of Rs. 45,00,000/-

13. That since the complainant had opted for the investment return plan, a memorandum of understanding dated 01.12.2012 was executed between the parties, which was a completely separate understanding between the parties in regards to the payment of assured returns in lieu of investment made by the complainant in the said project and leasing of the unit/space thereof.

14. That as per the mutually agreed terms between the complainant and the respondent, the basic sale price of the unit was determined taking into consideration that there will be a return at the rate of Rs.71.34/- per sq. ft. per month. Meaning thereby, the return will only be till the amount equivalent to the basic sale price of the unit. As per clause 9 of the MOU, the complainant herein had duly authorised the respondent to put the said unit on lease.

15. That the MOU executed between the parties was in the form of an "Investment Agreement." The complainant had approached the respondent as an investor looking for certain investment opportunities. Therefore, the

allotment of the said unit contained a "lease clause" which empowers the developer to put a unit of complainant along with the other commercial space unit on lease and does not have possession clauses, for handing over the physical possession. Hence, the embargo of the Real Estate Regulatory Authority, in totality, does not exist.

16. That a draft buyer's agreement was sent to the complainant to be executed between the complainant and the respondent for the unit allotted in the project. The complainant, even after duly receiving the BBA from the respondent, never came forward to execute the same despite reminder from the respondent.

17. That post allotment of the unit to the complainant and after receiving huge amount of assured returns i.e., Rs. 55,64,520/- from the respondent, against the basic sale consideration amount of Rs. 45,00,000/- the complainant deliberately and intentionally choose to default in clearing the outstanding dues towards EDC/IDC, Taxes, VAT and interest thereon. The complainant failed to clear the demands towards EDC/IDC, Taxes, VAT and interest thereon as per payment request dated 22.01.2020 against which reminder were also issued by the respondent vide reminder letter dated 30.10.2020.

18. That respondent was constrained to issue final reminder letter dated 05.11.2020, wherein the respondent provided one last and final opportunity to pay and clear all the arrears of instalments within 10 days i.e., on or before 15.11.2020 and in case of failure and or neglect to pay and clear the instalment amount within the above mentioned time, respondent shall constrained to cancel and terminate the allotment of the unit. Accordingly, due to the failure of the respondent to pay on time resulted in cancellation of the unit vide final reminder letter dated 05.11.2020.

19. That the respondent has already fulfilled its obligations of payment of assured returns i.e., Rs. 55,64,520/- from the respondent, against the basic

sale consideration amount of Rs. 45,00,000/- as per the mutually agreed terms of the MOU. As per the mutually agreed terms between the complainant and the respondent, the basic sale price of the unit was determined taking into consideration that there will be a return at the rate of Rs.71.34/- per sq.ft per month. Meaning thereby, the return will only be till the amount equivalent to the basic sale price of the unit. Therefore, as per the agreed terms the assured return obligation of the respondent is over and no further assured return is payable by the respondent to the complainant.

20. That without prejudice or admitting any allegation levied by the respondent, after the coming into force of the Banning of Unregulated Deposits Schemes Act, 2019 [hereinafter referred to as "*BUDS Act*"] in 2019 the respondent was constrained to cease all payment pertaining to assured return to all its allottees who had opted for the same from 2019.

21. That as the complainant in the present complaint is seeking the relief of assured return, it is pertinent to mention herein that the relief of assured return is not maintainable before the Ld. Authority upon enactment of the BUDS Act. That any direction for payment of assured return shall be tantamount to violation of the provisions of the BUDS Act.

22. 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 those undisputed documents and submissions oral as well as written (filed by the complainant) made by the parties.

E. Jurisdiction of the authority

23. 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

24. 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

25. 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.*

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

F. Findings on the relief sought by the complainant.

i. Direct the respondent to pay pending monthly assured return of Rs. 71.34/- per sq. ft (Rs 71,340 per month) accrued from the March 2019 along with interest to the complainant.

ii. **Direct the respondent to pay delayed possession charges from due date of delivery of possession of 01.12.2015 till date of offer of possession along with occupation certificate of booked unit.**

27. All the above-mentioned reliefs are interrelated accordingly, the same are being taken up together for adjudication. The complainant has sought delay possession charges and has also sought assured returns on monthly basis as per clause 3 of the MOU dated 01.12.2012.

28. The complainant booked a unit in the project of respondent and the MOU was executed on 01.12.2012. The total sale consideration of the unit is Rs. 45,00,000/- out of which the complainant has made a payment of payment of Rs. 49,87,527/--. The complainant in the present complaint seeks relief for the pending assured return as well as DPC. The plea of the respondent is otherwise and stated that the respondent cancelled the allotted unit of the complainant vide final reminder letter dated 05.11.2020.

29. Now the question before the authority is whether the cancellation issued vide reminder letter dated 05.11.2020 is valid or not.

30. The authority observes that the complainant has paid an amount of Rs. 49,87,527/- out of total sale consideration of Rs. 45,00,000/-. The respondent has issued a reminder letter dated 05.11.2020 for the payment of EDC/IDC charges and as per that letter they have provided one last and final opportunity to pay and clear all arrears of instalments within 10 days i.e., on or before 15.11.2020. The said reminder letter dated 05.11.2020 is reproduced hereunder for ready reference:

> *By the way of this Final Reminder Letter, the company hereby gives you one last and final opportunity to pay and clear all the arrears of instalment within 10 days i.e., on or before Nov 15 2020.*

31. The authority is of the view that the cancellation vide reminder letter dated 05.11.2020 is not valid as the complainant has already paid more than 100%

of the total sale consideration. Moreover, the respondent has only issued a reminder letter dated 05.11.2020 which clearly provides time period to make payments within 10 days. Hence, the letter dated 05.11.2020 cannot be treated as valid.

Assured Return

32. It is pleaded that the respondents 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 of the Banning of 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 respondent is otherwise and who took a stand that though it paid the amount of assured returns and did not paid after coming into force of the Act of 2019 as it was declared illegal.

33. 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. The different kinds of payment plans were in vogue and legal within the meaning of the agreement for sale. One of the integral part 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 returns 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 allottee. Now, three issues arise for consideration as to:

i. Whether the authority is within its jurisdiction to vary its earlier stand regarding assured returns due to changed facts and circumstances.
ii. Whether the authority is competent to allow assured returns to the allottee 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 allottee in pre-RERA cases

34. 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"*** (supra), 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 allottees 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 the 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 a 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 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 an 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 arises 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. 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 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 has 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.

35. 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.

36. It is pleaded on behalf of respondent/builder that after the Banning of Unregulated Deposit Schemes 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*

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

37. 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.

as a advance, accounted for in any manner whatsoever, received in connection with consideration for an immovable property

as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;

38. 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.

39. 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.

40. 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.

41. 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 complainants till possession of respective apartments stands handed over and there is no illegality in this regard.

42. 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.

43. 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.

44. 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.

45. It is a matter of fact that the occupation certificate for the unit has not been received. The relevant clause 3 of the MOU dated 01.12.2012 is reproduced hereunder for ready reference:

> 3.That the Company hereby has agreed to allot to the Allottee(s) premises measuring 1000 sq. ft. (92.90 Sq. Mtr.) super built up area on the Seventh floor of Tower of the said Project. The Allottee(s) has opted for the 'Investment Return Plan' and has agreed that the basic consideration for allotment of the premises is to be determined at Rs. 4500/- per sq. ft. taking into consideration a return of Rs. 71.34/- per sq. ft. per month, subject to the terms of this MOU.

46. The authority is of the view that as per clause 3 of the MOU dated 01.12.2012 the respondent/ developer are liable to pay arrears of assured returns till leasing of the unit.

Delay possession charges.

47. 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. It is worthwhile to consider that the there is no possession clause in the MOU executed between the parties executed on 01.12.2012. Moreover the said MOU is a leasing agreement and the relevant clause is reproduced hereunder:

> *That the premises after completion shall be handed over to the prospective Lessee subject to execution of the Lease deed. The Lessee*

after the tenure of the lease shall directly handover the possession to the Allottee(s). The Builder shall have no title or interest.

48. Therefore, the authority observes that delay possession charges are not allowed. 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. Hence, the authority directs the respondent/promoter to pay assured return from the date the payment of assured return has not been paid till lease of the said unit.

iii. Direct the respondent to execute and register the conveyance deed of the booked unit.

49. Section 17 (1) of the Act deals with duty 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."*

50. Accordingly, the authority directs the respondent to execute the conveyance deed in favour of the complainant after settling the dues, if any within 90 days from the date of this order.

H. Directions of the authority

51. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations

cast upon the promoter as per the function entrusted to the authority under section 34(f):

i. The respondent is directed to pay the arrears of amount of assured return at agreed rate to the complainant(s) till leasing of the unit. The respondent/promoter is directed to adjust the amount of assured return as already paid.

ii. The respondent shall execute the conveyance deed of the allotted unit within the 3 months of this order after obtaining valid OC from the competent authority and give offer to the complainant in 60 days thereof.

iii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

52. Complaint stands disposed of.

53. File be consigned to registry.

(Sanjeev Kumar Arora)
Member
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 22.03.2024