PROCEEDINGS OF THE DAY	13
Day and Date	Wednesday and 15.05.2024
Complaint No.	CR/5367/2022 Case titled as Satveer VS Venetian Ldf Projects Llp
Complainant	Satveer
Represented through	Shri Akash Gupta Advocate
Respondent	Venetian Ldf Projects Llp
Respondent Represented through	Ms. Tanya Advocate
Last date of hearing	10.04.2024
Proceeding Recorded by	Naresh Kumari and HR Mehta

Proceedings-cum-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 provision of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

Unit and Project related details-

S.No.	Particulars	Details
1.	Name and location of the project	83 Avenue, Sector 83 Gurugram.
2.	Nature of the project	Commercial
3.	DTCP license no.	12 of 2013 dated 15.03.2013
4.	RERA Registered/ not registered	**Lapsed project** Registered vide registration no. 310/42/2019 dated 16.01.2019 valid upto 30.09.2020

5.	Unit no.	Virtual space on 2nd floor
6.	Unit admeasuring area	250 Sq. Ft. (Super Area)
7.	Date of MOU	14.07.2014 (Page no. 9 of complaint)
8.	Due date of possession	14.07.2017 (Deemed to be 3 years from date of execution of MOU)
9.	Assured return	**Article 3.** *"Till the notice of offer of possession is issued, the developer shall pay to the allottee an assured return at rate of Rs. 80/- per sq. ft. per month of super area of premises per month.* *After completion of construction, till tenant is inducted possession is delivered to tenant and lease commences and rental is received by the allottee from the allottee, the developer shall pay to the allottee an assured return @ Rs. 66.65/- per sq. ft. per month of super area of premises per month. For a period of 3 years."* (Page no. 15 of complaint)
10.	Total sale consideration (BSP)	15,00,000/- (Page no. 13 of complaint)
11.	Total amount paid by the complainant	15,55,620/- (Page no. 14 of complaint)
12.	Occupation certificate	Not obtained
13.	Offer of possession	Not offered
14.	**Date of final judgement in previous complaint no. 403/2018** - – Relief of Refund, assured returns and possession(in alternative) being sought	**10.01.2019** (Direction to complainant to approach the appropriate forum as Authority had no jurisdiction to deal with relief of assured returns with a direction to the respondent to complete construction as per MOU being executed between the parties and fulfil its committed liability) (Page no. 24 of complaint)

Relief sought by the complainant – Direct the respondent to refund entire paid-up amount along with prescribed rate of interest.

2. **An application dated 29.03.2023 has been filed by the respondent challenging the maintainability of present complaint on the ground of res judicata** wherein it is alleged by the respondent that it is an admitted fact by the complainant that a complaint bearing no. CR/403/2018 had been previously filed by the complainants before this Authority seeking the relief of refund, assured return and possession (in alternative to refund). It is stated that the Authority vide its order dated 10.01.2019 directed the respondent/builder to complete the construction work within the time frame as per MOU and fulfil his committed liability. It is further stated that withdrawing from the project and continuing in the project are two distinct reliefs and after direction for completion of the project was made in the previous case, under no circumstance can refund be sought in the present complaint. Also, the order dated 10.01.2019 was not a conditional order giving liberty to the complainant to seek refund. Therefore, it is pleaded by the respondent that no cause of action whatsoever persists in favor of the complainant to file the present case.

3. A **reply to the said application has been filed by the complainant dated 18.07.2023** wherein it is stated by the complainant that the issue raised in the previous complaint was to recover the assured return amount from the respondent but the issue in the present complaint is to get refund of the entire sale consideration amount along with interest from the respondent. It is further stated that both the complaints have been filed with a different cause of action and moreover in previous complaint, the Authority had no jurisdiction to grant the relief sought by the complainants. It is further stated that the complainants had waited for 5 long years to get the delivery of the said unit but the respondent had not fulfilled its committed liability as per MOU and did not comply with the order of this Authority. Therefore, the application filed by the respondent is liable to be dismissed and present complaint should be proceeded further in the interest of justice.

4. **Issue involved- Whether the present complaint filed by the complainant is maintainable or not ?**
On 10.04.2024, the arguments of both the parties were heard and order was reserved on the point of maintainability. thereafter, the matter was listed on 15.05.2024 for pronouncement of order on maintainability.

5. **Findings of the Authority-** After going through the written as well as verbal submissions of both the parties, the Authority observes that a complaint vide CR No. 403 of 2018 had earlier been filed between the same parties and the relief sought in the complaint was as under-
   i. The complainants are seeking refund of Rs. 15,55,620/- already paid by them.
   ii. To direct the respondent to pay assured return from January 17 to July 15 @ Rs.10,000/- for each month amounting to Rs,1,30,000/-.
   iii. To direct the respondent to deposit TDS to IT department for financial year 2016-17, i.e., Rs.18,48,996/-
   iv. Alternatively, provide possession of the unit having super area of approximately 250 sq. ft.
   v. To direct the respondent to pay compensation of Rs.3,00,000/- to the complainant for mental agony, harassment and losses suffered as per Section 18 read with Section 19 of RERA Act.
   vi. To award costs.

6. The operating part of the order passed by the Authority on 10.01.2019 is as under:

"22. .....

(iv) This is a case of assured return, MOU between the parties were executed on 14.07.2014 and July, 2010 for allotment of a commercial unit admeasuring 250 sq. ft. in 83 Avenue Project, Sector 83, Manesar, Gurugram and as per assured return clause the respondent committed to pay Rs.9,000/- per month. Complainant has so far made a payment of Rs.15,55,620/- to the respondent and the respondent had only issued seven cheques to the complainant which could not be encashed for reasons known to the respondent. Thereafter, the office of the respondent was foun to be closed. Thus, the respondent neither paid any assured return to the complainant nor the possession of the booked unit has been handed over to the complainant till date.

(v) Considering all the facts and circumstances of the matter and taking into account the provisions of MOU executed inter se the parties, the Authority is of the considered opinion that complainant has invested money in commercial space to gain profit and no exact date of delivery of bookrd unit has been mentioned in MOU. Complaint does not lie before this authority and the same stands dismissed with liberty to the

complainant to pursue the matter in the appropriate forum, if he so desired.

23. Complaint is disposed of accordingly.

24. File be consigned to the registry."

7. The Authority observes that a detailed order on merits has already been passed on 10.01.2019 between the same parties on same subject matter litigating under same title after considering facts of the case. Further, the relief of refund was already pressed by the complainant in the former case. While deciding the former complaint case no. 403 of 2018, the Authority gave liberty to the complainant to approach the appropriate forum for redressal of his grievances. In case the complainant was dissatisfied with the order of the Authority, he was free to file an appeal against the said order before the appropriate forum.

8. The Authority is of the view that it cannot re-examine a case that has already been conclusively decided by the same forum, involving the same parties, subject matter, and under the same title. The Authority lacks the jurisdiction to review its own order as the matter in issue between the same parties has been heard and finally decided by this Authority in the former complaint case no. 403 of 2018. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of consumers. However, this cannot be fetched to an extent that basic principles of jurisprudence are to be ignored.

9. It is also observed that a subsequent complaint on same cause of action is barred by the principle of res-judicata as provided under Section 11 of the Code of Civil Procedure, 1908 (CPC). Section 11 CPC is reproduced as under for ready reference:

*"**11. Res judicata.**—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.*

....."

(Emphasis supplied)

10. Although the provisions of the Code of Civil Procedure, 1908 (CPC) are, strictly not applicable to the proceedings under the Act, save and except certain provisions of the CPC, which have been specifically incorporated in the Act, yet the principles provided therein are the important guiding factors and the authority being bound by the principles of natural justice, equity and good conscience has to consider and adopt such established principles of CPC as may be necessary for it to do complete justice. Moreover, there is no bar in applying provisions of CPC to the proceedings under the act if such provision is based upon justice, equity and good conscience. Thus, in view of the factual as well as legal provisions, the present complaint stands dismissed being not maintainable. File be consigned to the registry.

Ashok Sangwan
Member
15.05.2024