BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : **3975 of 2023**
Date of decision : **03.07.2024**

1. Mukesh Bajaj
2. Honey Bajaj
R/o: - Plot No. 57, Sector-1,
Vaishali, Ghaziabad, U.P-201010. **Complainants**

Versus

M/s. Neo Developers Private Limited
Regd. office: - 32-B, Pusa Road,
New Delhi-110005. **Respondent**

CORAM:
Shri Ashok Sangwan Member

APPEARANCE:
Sh. Garvit Gupta (Advocate) Complainants
Sh. Venkat Rao (Advocate) Respondent

ORDER

1. This complaint has been filed by the complainants/allottees 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*.

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:

Sr. No.	Particulars	Details
1.	Name of the project	"Neo Square", Sector-109, Gurugram, Haryana.
2.	Nature of the project	Commercial
3.	HRERA registered	Registered 109 of 2017 Dated – 24.08.2017
4.	DTCP licence	License no. 102 of 2008 Dated- 15.05.2008
4.	Unit no.	Priority no. -41, 5th Floor (As on page no. 37 of complaint)
5.	Unit area	500 sq.ft. [Super area] (As on page no. 37 of complaint)
6.	Buyer's Agreement executed	16.01.2017 (As on page no. 34 of complaint)
7.	M.O.U	16.01.2017

		(As on page no. 57 of complaint)
8.	Possession clause	**Clause 3 of the MOU** *The company shall complete the construction of the said Building/Complex, within which the said space is locate within* ***36 months from the date of execution this agreement or from the start of construction, whichever is later*** *and apply for grant of completion/occupancy certificate. The Company on grant of Occupancy Certificate shall issue final letters to the Allottees) who shall within 30 days, thereof remit all dues.* (As on page no. 59 of complaint)
9.	Due date of possession	16.01.2020 [Calculated 36 months from the date of agreement]
10.	Assured return	**Clause 4** *The Company shall pay a monthly assured return of* ***Rs.32,500/- (Rupees Thirty Two Thousand Five Hundred Only)*** *on the total amount received* ***w.e.f. 01.12.2016*** *before deduction of Tax at Source and service tax, cess or any other levy which is due and payable by the Allottee(s) to the Company and the balance sale*

		consideration shall be payable by the Allottee(s) to the Company in accordance with the Payment Schedule annexed as Annexure-1. The monthly assured return shall be paid to the Allottee(s) until the commencement of the first lease on the said unit. This shall be paid from the effective date. (As on page no. 59 of complaint)
11.	Basic sale consideration	Rs.20,90,000/- (As on page no. 39 of complaint)
12.	Total amount paid by the complainant	Rs.21,90,000/- (As per Account statement on page no. 67 of reply)
13.	Reminders sent by the respondent	02.05.2017 22.01.2020 30.10.2020 15.09.2021 29.06.2022 (As per annexure R-3 of reply)
14.	Final reminder cum cancellation letter	29.06.2022 (As on page no. 63 of reply3 of reply)
15.	Occupation certificate	Not obtained
16.	Offer of Possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions: -

I. That the complainants are simple, law abiding and peace-loving persons and the respondent is a company incorporated under the Companies Act, 1956.

II. That the complainants received a marketing call from the office of the respondent in the month of October, 2016 for booking in the project "Neo Square" in Sector-109, Gurugram. The marketing staff of the respondent painted a very rosy picture of the project and made several representations with respect to the innumerable world class facilities in the project and assured timely completion of all the obligations of the allotment. The respondent also assured that it would diligently offer assured return on the amount paid by the complainants till the commencement of the lease and thereafter the possession of the unit would be handed over and lease rentals will be given.

III. That the complainants induced by the assurances and representations made by the respondent, decided to book a unit in the project. On the basis of the representations made by the respondent and on its demand, the complainants made the payment amounting to Rs.20,90,000/-.

IV. The respondent provided the complainants with a copy of the agreement. After going through it, the complainants realized that the provisions in the agreement were wholly one sided, unilateral, arbitrary, illegal, unfair and biased in favour of the respondent and were totally un-balanced and unwarranted.

V. The complainants repeatedly requested the respondent for execution of the agreement with balanced terms. During such discussions, the respondent assured that no illegality whatsoever, would be committed by them and the terms would be as prescribed under the provisions of RERA Act, 2016. The respondent/promoter refused to amend or change any term of the pre-printed agreement and further threatened the complainants to forfeit the previous amount paid towards the unit if the agreement was not signed and submitted. The complainants were left with no other option but to sign the agreement.

VI. That a Memorandum of Understanding (MOU) was executed between the respondent and the complainants on the same date and as per clause 4 of the MOU, the basic sale consideration of the unit was Rs.20,00,000/- and the said amount had already been paid by the complainant. The respondent had categorically assured at the time of the booking that it would be diligent in making payments towards the assured return and in adhering to its contractual obligations. As per clause 4 of the MOU, it was agreed that the respondent would pay monthly assured return of Rs.32,500/- on the total amount received with effect from 01.12.2016 till the 'commencement' of first lease. The relevant portion of Clause 4 of the MOU is reproduced hereunder:-

> *"4. The Company shall pay a monthly assured return of* ***Rs. 32,500/- (Rupees Thirty Two Thousand Five Hundred Only)*** *on the total amount received with effect from 01st December 2016....The monthly assured return shall be paid to the Allottee(s) until the Commencement of the first lease on the said unit."*

VII. Furthermore, it was also agreed vide clause 7(a) of the said MOU that the responsibility of assured returns to be paid by the company would cease on commencement of first lease and thereafter the allottee would be entitled to receive lease rentals. Clause 7(a) of the said MOU is attached herewith:-

> *"7(a). That the responsibility of assured returns to be paid by the Company shall cease on commencement of the first lease of the said unit whereupon the Allottee(s) shall be entitled to receive the lease rentals."*

VIII. That thereafter, the respondent vide its letter dated 30.03.2017 intimated the complainants that unit no. 541 on 5th floor has been allocated to them and vide the said letter demanded payment of an amount of Rs.1,00,000/- towards the VAT charges. The said demand of VAT charges was absolutely illegal and the same was contested by the complainants. The respondent in order to justify its illegal demands sent a copy of the notification and assessment order under Haryana VAT Act, 2003. That complainant no.1 vide email dated 08.05.2017 sought clarification regarding the same and intimated that the demand towards the VAT charges were illegal even as per the assessment order sent by the respondent. The respondent vide its email dated 15.05.2017 admitted that the assessment order on the basis of which certain VAT charges were raised were not related to it and was sent only for reference. However, despite such admission, no heed was paid and the complainants were constrained to make the payment towards the VAT charges strictly under coercion and threat of levy of additional illegal charge of 18% interest. However, it was assured by the respondent that no further VAT charges would be demanded by

the respondent. Since the said payment is illegal and could not have been demanded, the complainants are entitled to and are claiming the said amount of Rs.1,00,000/-

IX. That respondent kept on making delayed payment towards the monthly assured return till June, 2019. Some of the cheques issued were even dishonoured. The complainants confronted the respondent vide emails dated 01.08.2019 and 12.08.2019 requesting the respondent to resume the payment of the monthly assured returns. It was assured and promised by the representatives of respondent vide its letter dated 18.12.2019 that the said amount would be adjusted along with interest at the time of possession. It was also stated that the said payment could not be made as it had become illegal for it to withdraw the funds from the bank account and that its auditors are refusing to approve the withdrawals from the project account for the purpose of meeting the commitments of the interest payments.

X. That as per clause 3 of the MOU, the possession of the unit was to be handed over within a period of 36 months from the date of execution of the agreement. The relevant portion thereof is reproduced hereunder:-

> *"3...The company shall complete the construction of the said Building/Complex, within which the said space is located within* ***36 months from the date of execution of this Agreement or from start of construction whichever is later*** *and apply for grant of completion/Occupancy certificate."*

XI. Thus, the due date to hand over the possession as per the terms of the MOU was 15.01.2020.The complainants visited the office of respondent in January, 2020 to enquire about the date of possession and pending payment of the monthly assured returns. It

was informed that the possession of the unit would soon be handed over along with adjustment of the delayed payment interest and monthly assured rentals. However, the assurances of the respondent turned out to be incorrect. Vide its payment request letter dated 22.01.2020, the respondent demanded Rs. 1,50,800/- from the complainants on account of VAT outstanding charges. No information or intimation was given by the respondent as to how and why such charges have been demanded. The complainants met the representatives of the respondent and informed them that the said illegal demand would not be paid by them. The respondent assured that the said illegal demand would be revoked by it. However, no steps as on date has been taken by the respondent to revoke the said illegal demand.

XII. That the respondent once again intimated to the complainants vide its email dated 09.04.2020 that the performance of the respondent to make payment towards the monthly assured return has been impacted on account of certain reasons and vide email dated 11.09.2020, intimated to the complainants that the leasing process of the project in question has started.

XIII. That the respondent informed the complainants vide letter dated 01.02.2022 that the respondent had applied for the grant of occupation certificate in 2021 and on account of certain reasons, the same was not granted and that it had withdrawn the application. Moreover, it was also stated that after getting the occupation certificate, the respondent would immediately offer the possession. It was also informed that the respondent would adjust

the payment towards the monthly interest at the time of possession. Hence, some things became absolutely clear to that firstly, the mail dated 11.09.2020 intimating about the start of the leasing process was against the law as no occupation certificate had been obtained by the respondent and the question of leasing the unit or starting the process for leasing out prior to the obtaining the Occupation certificate does not even arise. Secondly, the respondent had itself admitted that the unit was to be handed over and that the assured monthly rental would be adjusted with the monthly interest.

XIV. The respondent vide its email dated 29.08.2022 yet again clarified that the assured return would be adjusted by it at the time of possession as per the agreement signed between the parties and the same would be settled within a months' time post possession tentatively. It was also informed to the complainants that the lease has been signed and registered with the tenant and the amount of lease rent would be payable to the complainants under the MOU. It is pertinent to mention herein that till date, no Occupation certificate has been received and hence the lease deed, if any, signed, is null and void. Any unit can be occupied and be put on lease for occupation only after the grant of Occupation certificate by the concerned departments.

XV. That the respondent has misused and converted to its own use the huge hard earned amounts received from the complainants and other buyers in the project in a totally illegal and unprofessional manner and the respondent was least bothered about the timely

finishing of the project and delivery of possession of the unit in question to the complainants as per the terms of allotment. The respondent has deliberately, mischievously, dishonestly and with malafide motives cheated and defrauded the complainants.

XVI. That the complainants apprehend that the respondent would illegally and unilaterally alter the allotment by creating third party rights. The said strong apprehension is based on the fact that the representatives of the respondent have been issuing threats to the complainants that in case the complainants don't accept the unilateral reasoning given by the respondent then it would allot the unit in question to a third party and would allot an alternate new unit to the complainants on some other floor.

XVII. That the respondent is enjoying the valuable amount of consideration paid by the complainants out of their hard earned money and the complainants realizing the same demanded delayed possession charges from the respondent/promoter. But a week ago, the respondent has in complete defiance of its obligations refused to hand over the possession to the complainant along with delayed possession charges and assured return leaving them with no other option but to file the present complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

i. Direct the respondent to make payment of delayed interest on the amount paid from the due date i.e 15.01.2020 till the date of actual handing over of possession + 2 months.

ii. Direct the respondent to make payment towards the assured return from June 2019 onwards till the commencement of first lease and thereafter, lease rentals.

iii. Direct the respondent not to terminate the allotment of the complainants or create third party rights on the allotted unit/space.

iv. Direct the respondent not to change the allotted unit.

v. Direct the respondent to revoke the demand letter dated 22.01.2020 and no to charge VAT.

vi. Direct the respondent to refund Rs.1,00,000/- paid by the complainants towards VAT charges in the year 2017.

vii. Direct the respondent to demarcate the unit in question and handover possession in habitable condition after the obtaining the Occupation certificate.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds:

I. That the respondent from time-to-time issued demand request/reminders to the complainants to clear the outstanding dues against the booked unit. However, the complainants delayed the same for one or the other reasons. Infact, after a point of time the complainants started defaulting in clearing the outstanding dues and the respondent issued several demand letters as follows:

12.05.2017	Against Administrative Charges	Rs. 1,00,000/-
22.01.2020	Against VAT Amount	Rs. 1,50,800/-
30.10.2020	Reminder - 1 against VAT Amount	Rs. 1,91,750/-
15.09.2021	Reminder – 2 against VAT Amount	Rs. 1,62,500/-
29.06.2022	Reminder for clearing outstanding payments towards unit	Rs. 1,64,588/-

II. That the respondent vide letter dated 29.06.2022 provided the last and final opportunity to the complainants to clear the outstanding dues amounting to Rs.1,64,588/- against the unit on or before the 15.07.2022. However, the complainants intentionally failed to clear dues as per the demand letter. It further pertinent to mention that vide the same letter dated 29.06.2022 the respondent made it very abundantly clear that in case of failure to clear the outstanding dues within the time stipulated, as mentioned in the letter, the respondent would be compelled to consider this failure of the complainants as breach of the terms and conditions of the MOU as well as Agreement and thereafter the unit shall be treated as cancelled from the next day following the last date of payment.

III. The complainants had only paid Rs.21,90,000/- against the total due amount of Rs.23,54,588/-. It is to be noted that there lies an outstanding due of Rs.1,64,588/- to be paid by the complainants. The respondent had been running behind the complainants for the timely

payment of dues towards the unit. That in spite of being aware of the payment plans the complainants herein has failed to pay the outstanding dues on time.

IV. It is humbly submitted that the respondent is raising the VAT demands as per government regulations. That the rate at which the VAT amount is charged is as per the provisions of the Haryana Value Added Tax Act 2003.

V. It is submitted that the as per clause 3 of the 'MOU', the respondent was obligated to complete the construction of the said complex within 36 months from the date of execution of the MOU or from start of construction, whichever is later and apply for grant of Completion/Occupancy Certificate:

> *".....The Company shall complete the construction of the said Building/Complex, within which the said space is located within 36 months from the date of execution of this agreement or from the start of construction, whichever is later and apply for grant of completion/Occupancy Certificate. The company on grant of Occupancy Completion/Certificate, shall issue final letters to the Allottee(s) who shall within 30 (thirty) days, thereof remit all dues".*

VI. That as per clause 5.2 of the agreement, the construction completion date was the date when the application for grant of completion/occupancy certificate was made. For the convenience of the Ld. Authority Clause 5.2 is produced for ready reference:

> *"5.2. That the construction completion date shall be deemed to be the date when the application for grant of completion/occupancy certificate is made".*

VII. Accordingly, the due date of delivery of possession in the present case is 36 months + 6 months (grace period) to be calculated from

25.08.2016, and the due date of possession in the instant case comes out to be 18.09.2020.

VIII. That the complainants with the intent to invest as an investor approached the respondent and inquired about the project i.e., "Neo Square", situated at Sector-109, Gurugram, Haryana. That after being fully satisfied with the project and the approvals thereof, the complainants submitted an application form dated 05.11.2016, whereby themselves seeking allotment of priority no. 41, admeasuring 500 sq. ft on the 5th floor having a basic sale price of Rs.20,00,000/- The complainants considering the future speculative gains, also opted for the Down Payment Plan – AR (Assured Return Plan) being floated by the respondent for the project.

IX. That since the complainant opted for the Investment Return Plan, a Memorandum of Understanding dated 16.01.2017 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 complainants in the project and leasing of the unit/space thereof. It is pertinent to mention herein that as per the mutually agreed terms between the complainants and the respondent, the returns were paid from 01.12.2016 till the commencement of first lease. It is also submitted that as per clause 4 of the MOU, the complainant herein had duly authorised the respondent to put the said unit on lease.

X. That by no stretch of imagination it can be concluded that the complainants herein are ***"Allottee/Consumer."*** That they are simply investors who approached the respondent for investment

opportunities and for a steady assured returns and rental income. That the same was duly agreed between the parties in the documents executed therein.

XI. That the complainants are trying to mislead the Authority by concealing facts which are detrimental to this complaint at hand. That the MOU executed between the parties was in the form of an Investment Agreement and the complainants had approached the respondent as an investor looking for certain investment opportunities. Therefore, the allotment contained a "Lease Clause" which empowers the developer to put the unit of the complainants 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 Authority, in totality, does not exist.

XII. It is also pertinent to mention that the complainants voluntarily executed the Buyer Agreement dated 16.01.2017 after having full knowledge and being well satisfied and conversant with the terms and conditions of the Buyer Agreement.

XIII. That the respondent was always prompt in making the payment of assured returns as agreed under the MOU. It is not out of the place to mention that the respondent had been paying the committed return of Rs.32,500/- for every month to the complainants without any delay. That as on 2019, the complainants had already received an amount of Rs.10,07,500/- as assured return against the basic sale consideration of Rs.20,00,000/- of the unit. However, post July 2019, the respondent could not pay the agreed assured returns due to prevailing legal position w.r.t. banning of returns over unregulated

deposits post the enactment of the BUDS Act, which has been detailed herein below.

XIV. It is most humbly submitted that as per clause 4 and clause 7 of the MOU dated 25.08.2016, the obligation of payment of assured return was only till the commencement of the first lease on the unit. The relevant paragraphs in this regard have been reiterated for ready reference:

> *"4. ..... The monthly assured return shall be paid to the Allottee(s) until the commencement of the first lease on the said unit."*
>
> *"7. (a) That the responsibility of assured returns to be paid by the Company shall cease on commencement of the first lease of the said unit..."*

XV. It is further submitted that the first lease of the premises wherein the unit is situated has already been executed on 10.07.2020. Thereby, the respondent has duly fulfilled its obligations of execution of the first lease in terms of the MOU. That after the commencement of the first lease, the respondent has duly intimated the complainants vide letter dated 01.10.2020 and various telephonic conversations regarding the same. The respondent further sent a letter for assignment of lease form to the complainants to come forward to sign the lease assignment, as had been agreed in the MOU. However, the complainants did not came forward to sign the lease assignment. That the respondent further sent reminder letters dated 10.12.2020 & 07.12.2021 to sign the lease assignment form. However, all these requests and reminders fell on deaf ears of the complainants and they blatantly ignored them.

XVI. It is most humbly submitted that it is an established practise in the Real Estate Sector, wherein the promoter executes a lease deed with

a lessee for a future project even before the completion of the project. In fact, there is no bar by any statutory provision on entering into such understanding. There have been numerous such instances where renowned developers have adopted such a practise. Few of such instances/ are reproduced herein, which will also prove that it is legally valid to lease out a premises before the completion of the project:

a. That the real estate firm "Embassy Group", one of the leading commercial real estate developer in its statement released on 08.08.2018 said it shall develop a 11,00,000 sq. feet. built to suit facility "Embassy Tech Village" project in Bengaluru in phases, with the first phase expected to be delivered by the first quarter of 2021. In the same statement it was also mentioned that they have signed a long-term lease agreement with JP Morgan for commercial office space at the same Project. It is noteworthy mention here that the said statement was released by the Embassy Group on 08.08.2018, when the project was under construction and the expected date of delivering the first quarter was 2021.

b. Similarly, the Embassy Office Parks REIT leased 1.8 million sq. ft. across 25 deals including a 5.50 lakh sq. ft. pre-commitment from JP Morgan at Embassy Tech Village in the June quarter of 2022. Hence, it proves that the executing a lease deed before the completion of the project is valid in the eyes of law.

c. In a news article it is stated that Real Estate firm DLF has leased nearly 3,00,000 sq. ft. office space to three companies in Gurugram. Majority of the space has been taken at DLF Downtown, an upcoming project in Gurgaon. It was further stated that the leasing is part of these company's expansion plan once the current Covid-19 situation stabilises. The building where space has been taken is under construction and is expected to be ready by December 2021.

d. In another article, Embassy Group stated that it has leased 85,000 sq. ft. of office space to automotive software company Acsia Technologies at Embassy Taurus TechZone (ETTZ) in Trivandrum in April 2022 before the completion of the Project which is scheduled for handover in April 2023.

XVII. It is most humbly submitted that as per the mutually agreed terms between the complainants and the respondent, the payment of assured returns was to commence only from August 2016 till the commencement of first lease. However, the Banning of Unregulated Deposits Schemes Act, 2019 [hereinafter referred to as "***BUDS Act***"] came into force in 2019 and therefore the respondent was constrained to cease all payment pertaining to Assured Return to all its allottees who had opted for the same from 2016.

XVIII. That as the complainants 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.

XIX. That a writ was filed before the Hon'ble High Court of Punjab & Haryana in the matter of ***Vatika Ltd. vs Union of India & Anr. - CWP-26740-2022,*** on similar grounds of directions passed for payment of Assured Return being completely contrary to the BUDS Act. That the Hon'ble High Court after hearing the initial arguments vide order dated 22.11.2022 was pleased to pass direction with respect to not taking coercive steps in criminal cases registered against the petitioner therein, seeking recovery of deposits till the next date of hearing. Further, a ***Civil Writ Petition bearing no. 16896/2023***

titled as "NEO Developers Pvt Ltd vs Union of India and Another" has been filed by the respondent on similar grounds as in the supra case before the Hon'ble Punjab and Haryana High Court and the same is been connected by the Hon'ble High Court with the Civil Writ Petition - 26740-2022 and is pending adjudication.

XX. That it is also apropos to bring into the knowledge of the Authority that an ***Appeal bearing no. 95 of 2022, titled as Venetian LDF Project Limited vs Mohan Yadav***, is already pending before the Hon'ble Haryana Real Estate Appellate Tribunal (HREAT). Wherein, the Hon'ble Tribunal vide order dated 18.05.2022, has already stayed the order passed by this Hon'ble Authority, granting the relief of assured return in favour of the allottee. The relevant provision of the said order dated 18.05.2022; is mentioned herein below for ready reference:

> *.... that the Scheme under which the unit was allotted to the respondent-allottee was the Assured Return Scheme and, therefore, the matter falls under the Banning of Unregulated Deposit Schemes Act, 2019 (in short the Act of 2019). He further contended that in view of the provisions of the Act of 2019, Ld. Authority has no jurisdiction to decide the issue. He further contended that the amount deposited by the complainant (respondent herein) would be a deposit in terms of the Act of 2019 read with the Companies Act as well as the Companies (Acceptance of Deposits) Rules, 2014....*
>
> *... Let notice of the present appeal as well as notice regarding stay be issued to the respondent...*

XXI. Also, it is apropos to bring into the knowledge of the Ld. Authority that an ***Appeal bearing no. 647 of 2021, titled as Vatika Limited vs Vinod Agarwal***, is already pending before the Hon'ble Haryana Real Estate Appellate Tribunal (HREAT). Wherein, the Hon'ble Tribunal vide order dated 27.01.2021, has already stayed the order passed by

this Hon'ble Authority, granting the relief of assured return in favour of the allottee. The relevant provision of the said order dated 27.01.2022; is mentioned herein below for ready reference:

> *"The matter falls under the Banning of Unregulated Deposit Schemes Act, 2019 (in short, the Act of 2019). He contended that in view of the provisions of the Act, 2019 the Ld. Authority has no jurisdiction to decide the issue. He further contended that the amount deposited by the complainant (respondent herein) would be a deposit in terms of the Act of 2019 read with Companies Act and the Companies Rules, 2014, He further contended that the delayed possession interest has been awarded even for the period where the assured return has been given to the Complainant. He further contended that there cannot be delayed possession charges because of the nature of Agreement...*
>
> ***...Let notice of the present appeal as well as notice regarding stay be issued to the respondent...***

XXII. That as per the agreement, the completion of the unit was subject to the midway hindrances which were beyond the control of the respondent. In case, the construction of the commercial unit was delayed due to such 'Force Majeure' conditions, the respondent was entitled for extension of time period for completion. It is to be noted that the development and implementation of the project have been hindered on account of several orders/directions passed by various authorities/forums/courts as has been delineated here in below:

	Date of Order	**Directions**	**Period of Restriction**	**Days affected**	**Comments**
	07.04.2015	National Green Tribunal had **directed that old**	**7th of April, 2015**	**30 days**	The aforesaid ban affected the supply of raw

			diesel vehicles (heavy or light) more than 10 years old would not be permitted to ply on the roads of NCR, Delhi. It has further been directed by virtue of the aforesaid order that all the registration authorities in the State of Haryana, UP and NCT Delhi would not register any diesel vehicles more than 10 years old and would also file the list of vehicles before the tribunal and provide the same to the police and other concerned authorities.	**to 6th of May, 2015**		materials as most of the contractors/building material suppliers used diesel vehicles more than 10 years old. The order had abruptly stopped movement of diesel vehicles more than 10 years old which are commonly used in construction activity. The order had completely hampered the construction activity.
	19th 2016	**July**	National Green Tribunal in O.A. No. 479/2016 had directed that no stone crushers be	Till date the order in	**30 days**	The directions of NGT were a big blow

			permitted to operate unless they operate consent from the State Pollution Control Board, no objection from the concerned authorities and have the Environment Clearance from the competent Authority.	force and no relaxation has been given to this effect.			to the real estate sector as the construction activity majorly requires gravel produced from the stone crushers. The reduced supply of gravels directly affected the supply and price of ready mix concrete required for construction activities.
3.	8th	Nov,	National Green	8th Nov, 2016	7 days	The bar imposed	

	2016		Tribunal had directed all brick kilns operating in NCR, Delhi would be prohibited from working for a period of one week from the date of passing of the order. It had also been directed that no construction activity would be permitted for a period of one week from the date of order.	to 15th Nov, 2016		by Tribunal was absolute. The order had completely stopped construction activity.
4.	**7th 2017**	**Nov,**	Environment Pollution (Prevention and Control Authority) had directed to the closure of all brick kilns, stones crushers, hot mix plants, etc. with effect from 7th Nov 2017 till further notice.	**Till date the order has not been vacated**	**90 days**	The bar for the closure of stone crushers simply put an end to the construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not feasible. The respondent eventually ended up locating alternatives with the intent of expeditiously concluding

						construction activities but the previous period of 90 days was consumed in doing so. The said period ought to be excluded while computing the alleged delay attributed to the Respondent by the Complainant. It is pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21st Dec, 19 and 30th Jan, 20.
5.	9th Nov 2017 and 17th Nov, 2017		National Green Tribunal has passed the said order dated 9th Nov, 2017 completely prohibiting the carrying on of construction by any person,		**9 days**	On account of passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction

			private, or government authority in NCR till the next date of hearing. (17th of Nov, 2017). By virtue of the said order, NGT had only permitted the competition of interior finishing/interior work of projects. The order dated 9th Nov, 17 was vacated vide order dated 17th Nov, 17.			activity has been completely stopped during this period.
6.	29th October 2018		Haryana State Pollution Control Board, Panchkula has passed the order dated 29th October 2018 in furtherance of directions of Environmental Pollution (Prevention and Control) Authority dated 27th Oct 2018. By virtue of order dated 29th	**1st Nov to 10th Nov, 2018**	**10 days**	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.

			of October 2018 all the construction activities including the excavation, civil construction were directed to remain close in Delhi and other NCR Districts from 1st Nov to 10th Nov 2018.			
7.	24th July, 2019		NGT in O.A. no. 667/2019 & 679/2019 had again directed the immediate closure of all illegal stone crushers in Mahendergarh Haryana who have not complied with the siting criteria, ambient, air quality, carrying capacity, and assessment of health impact. The tribunal further directed initiation of action by way of prosecution		**30 days**	The directions of the NGT were again a setback for stone crushers operators who have finally succeeded to obtain necessary permissions from the competent authority after the order passed by NGT on July 2017. Resultantly, coercive action was taken by the authorities against the stone

		and recovery of compensation relatable to the cost of restoration.			crusher operators which again was a hit to the real estate sector as the supply of gravel reduced manifolds and there was a sharp increase in prices which consequently affected the pace of construction.
8.	11th October 2019	Commissioner, Municipal Corporation, Gurugram has passed an order dated 11th of Oct 2019 whereby the construction activity has been prohibited from 11th Oct 2019 to 31st Dec 2019. It was specifically mentioned in the aforesaid order that construction activity would be completely stopped during	**11th Oct 2019 to 31st Dec 2019**	**81 days**	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.

		this period.			
9.	04.11.2019	The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as *"MC Mehta vs. Union of India"* completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020.	**04.11.2019 - 14.02.2020**	**102 days**	These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage the Construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court.
10.	3rd week of Feb 2020	Covid-19 pandemic	**Feb 2020 to till date**	**To date months Nationwide lockdown)**	Since the 3rd week of February 2020, the Respondent has also suffered devastatingly because of the outbreak, spread, and resurgence

					of COVID-19 in the year 2020. The concerned statutory authorities had earlier imposed a blanket ban on construction activities in Gurugram. Subsequently, the said embargo had been lifted to a limited extent. However, during the interregnum, large-scale migration of labor occurred and the availability of raw materials started becoming a major cause of concern.
11.	Covid in 2021	That period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was banned in the	12.04.2021 - 24.07.2021	**103 days**	Considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then

		State			complete curfew.
			Total days	**582 days**	

XXIII. That that a period of 582 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of force majeure. Thus, the respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated above and therefore the same is not to be taken into reckoning.

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

E. Jurisdiction of the authority

The contention 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

8. 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

9. 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;*

10. 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.

11. 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. (Supra) 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."*

12. 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 complainants being investor not allottees.

13. The respondent has taken a stand that the complainants are investors and not consumers, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumer of the real estate sector. The authority observed that the respondent is

correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainants are buyers and have paid total price of **Rs.21,90,000/-** to the promoter towards purchase of an unit in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

> *"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

14. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement and MOU executed between promoter and complainant, it is crystal clear that they are allottees as the subject unit is allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated

29.01.2019 in appeal no. 0006000000010557 titled as ***M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.*** has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being investors are not entitled to the protection of this Act stands rejected.

F.II. Objection regarding the project being delayed because of force majeure circumstances and contending to invoke the force majeure clause.

15. The respondent/promoter has raised the contention that the construction of the tower in which the unit of the complainants is situated, has been delayed due to force majeure circumstances such as orders/restrictions of the NGT as well as competent authorities, High Court and Supreme Court orders etc. However, all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 16.01.2020. Hence, events alleged by the respondent do not have any impact on the project being developed by the respondent. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons as it is a well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the reliefs sought by the complainant

G.I Direct the respondent to pay the arrears of assured return @Rs32,500/- per month from June 2019 till the commencement of first lease and thereafter lease rentals.

G.II Direct the respondent to pay delayed possession charges.

16. The above-mentioned reliefs are interrelated accordingly, the same are being taken together for adjudication. The complainants have sought delay possession charges alongwith assured return on monthly basis as per clause 3 of the M.O.U dated 16.01.2020.

17. The complainants booked a unit in the project of the respondent and the MoU was executed on 16.01.2017. The basic sale consideration of the unit is Rs.20,90,000/- out of which the complainants have made a payment of Rs.21,90,000/-. The complainants 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 allotted unit of the complainants stands cancelled vide final reminder letter dated 29.06.2022.

18. Now the question before the Authority is whether the cancellation issued vide reminder letter dated 05.11.2020 is valid or not?

19. The Authority observes that the complainants have paid an amount of Rs. 21,90,000/- out of the basic sale consideration of Rs.20,90,000/-. The respondent has issued a reminder letter dated 29.06.2022 for the payment of the outstanding dues and as per that letter one last and final opportunity was provided to the complainants to pay and clear all arrears of instalments within 15 days i.e., on or before 15.07.2022. The relevant part of the reminder letter dated 29.06.2022 is reproduced hereunder for ready reference:

" You are hereby called upon to clear all outstanding payments amounting to Rs.1,64,588/- within 15 days from the date of this notice i.e., on or before 15th July 2022 (Referred herein as Last Date for Payment)"

20. The Authority is of the view that the cancellation letter dated 29.06.2022 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 29.06.2022 which clearly provides time period to make payments within 15 days. Hence, the letter dated 29.06.2022 cannot be treated valid cancellation letter.

- **Assured return**

21. 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 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.

22. The M.O.U dated 16.01.2017 can be considered as an agreement for sale interpreting the definition of the agreement for "agreement for sale" under section 2(c) of the Act and broadly by taking into

consideration the objects of the Act. Therefore, the promoter and allottee would be bound by the obligations contained in the memorandum of understandings and the promoter shall be responsible for all obligations, responsibilities, and functions to the allottee as per the agreement for sale executed inter-se them under section 11(4)(a) of the Act. 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. One of the integral parts of this agreement, the letter dated 16.01.2017 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.

23. It is pleaded on behalf of respondents/builders 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 Z(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:

(i) an amount received in the course of, or for the purpose of business and bearing a genuine connection to such business including

(ii) 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 properly as specified in terms of the agreement or arrangement.

24. 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:

(i) *as an advance, accounted for in any manner whatsoever, received in connection with consideration for on immovable property*

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

25. 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.

26. 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 (4J of the BUDS Act 2019.

27. 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.

28. The project in which the advance has been received by the developer from the allottees is an ongoing project as per section 3(1) of the Act of 2015 and, the same would fall within the jurisdiction of the Authority for giving the desired relief to the complainants besides initiating penal proceedings. So, the amount paid by the complainants 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.

29. The money was taken by the builder as a 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.

30. 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 complainants 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. 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. The Authority is of the view that since the occupation certificate in respect to the project has not been received yet and thus the respondent cannot execute a lease deed with the third party. The lease deed executed on 10.07.2020 thus holds not relevance here. Also, in the lease deed dated 10.07.2020, a description of the unit no's and the floor is specified in respect to which the lease deed has been executed, the said specification has no mention of the subject unit. Thus, it can be concluded that the said lease deed is not in respect of the subject unit.

31. Therefore, the Authority directs the respondent/promoter to pay assured return from the date assured return was last paid to the complainants till the execution of first lease after obtaining the occupation certificate.

- **Delayed possession charges**

32. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges however, 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]***
> *(1) 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.*

33. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

34. 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., 03.07.2024 is 8.95%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.95%.

35. 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—*

(i) 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;

(ii) 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;"

36. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of a provision in the BBA or in a MoU having reference of the BBA or an addendum to the BBA or in a MoU or allotment letter. The assured return in this case is payable from the date of till the commencement of the first lease on the said unit, after obtaining the occupation certificate.

37. The rate at which assured return has been committed by the promoter is Rs.32,500/- per month. 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 higher. By way of assured return, the promoter has assured the allottees that they would be entitled for this specific amount till the commencement of the first lease on the said unit. Accordingly, the interest of the allottee is protected even after the due date of possession is over as the assured returns are payable from the date 01.12.2016. The monthly assured return shall be paid to the allottee(s) until the commencement of the first lease on the said unit after obtaining the occupation certificate. The purpose of delayed possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottees as their money is continued to be used by the promoter even after the promised due date and in

return, they are to be paid either the assured return or delayed possession charges whichever is higher.

38. Accordingly, the Authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under section 18 and assured return is payable even after due date of possession till the commencement of the first lease on the said unit, after obtaining the occupation certificate. The allottee shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation. In the present case, the assured return was payable till the commencement of first lease. The project is considered habitable or fit for occupation only after the grant of occupation certificate by the competent authority. However, the respondent has not received occupation certificate from the competent authority till the date of passing of this order. Hence, the said building cannot be presumed to be fit for occupation. Furthermore, the respondent has put the said premises on lease by way of executing lease deed dated 10.07.2020. In the absence of occupation certificate, the said lease cannot be considered to be valid in the eyes of law. In view of the above, the assured return shall be payable till the said premises is put to lease after obtaining the occupation certificate from the competent authority.

39. Hence, the Authority directs the respondent/promoter to pay assured return to the complainants at the rate of Rs.32,5000/- per month from the date i.e., 01.12.2016 till the commencement of the first lease on the said unit after obtaining the occupation certificate as per the

memorandum of understanding after deducting the amount already paid on account of assured returns to the complainants.

G.III. Direct the respondent to demarcate the unit in question and handover possession in habitable condition after the obtaining the Occupation certificate.

40. Under section 19, clause 1 the allottee is entitled to obtain the information relating to sanctioned plans, layout plans alongwith the specifications from the promoter. Relevant section has been reproduced below:

> *"**Section 19 Rights and duties of allottees-***
> *(1)The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter"*
>
> *[Emphasis supplied]*

41. The respondent/promoter is directed to provide specifications to the complainants/allottees regarding the subject matter unit of the complainants and also offer possession of the unit to the complainants, within 60 days after receiving the occupation certificate from the concerned authorities. The complainants/allottees are directed to pay the outstanding dues, if any.

G.IV. Direct the respondent not to terminate the allotment of the complainants or create third party rights on the allotted unit/space.

42. Vide proceedings dated 27.03.2024, the Authority had directed the respondent/promoter to maintain the status-quo with respect to the subject unit of the complainants/allottees as out of the total sale

consideration, the complainants/allottees have paid a considerable amount to the respondent/promoter.

G.VI. Direct the respondent to revoke the demand letter dated 22.01.2020 and no to charge VAT.

G.VII. Direct the respondent to refund Rs.1,00,000/- paid by the complainants towards VAT charges in the year 2017.

43. The Authority has held in ***CR/4031/2019 titled Varun Gupta Vs. Emaar Mgf Land Ltd.*** that the promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT) under the amnesty scheme. The promoter shall not charge any VAT from the allottees/prospective buyers during the period 01.04.2014 to 30.06.2017 since the same was to be borne by the promoter-developer only.

44. The Authority is of the view that the respondent/promoter has made an illegal demand vide demand letter dated 18.05.2017 and also the demand letter dated 22.01.2020 for the payment of outstanding dues on account of VAT charges was illegal.

45. Thus, the respondent/promoter is directed to refund the amount of Rs.1,00,000/- paid by the allottee alongwith an interest @10.95% from the date of payment till the actual realization.

H. Directions of the authority

46. 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 cancellation letter dated 29.06.2022 is hereby set aside and the respondent is directed to pay the arrears of amount of assured return at the rate i.e., Rs.32,500/- per month from the date i.e., 01.12.2016 till the commencement of the first lease on the said unit as per the memorandum of understanding, after deducting the amount already paid by the respondent on account of assured return to the complainants.

ii. The respondent is directed to pay arrears of accrued assured return as per MoU dated 16.01.2017 till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @8.95% p.a. till the date of actual realization.

iii. The respondent is directed to offer possession of the unit within 2 months from the date of obtaining occupation certificate from the concerned authorities.

iv. The respondent/promoter is directed to provide specifications to the complainants/allottees regarding the subject matter unit of the complainant.

v. The respondent shall not charge anything from the complainants which is not the part of the agreement of sale.

vi. The respondent/promoter is directed to adjust the amount of Rs.1,00,000/- with the dues payable by the allottee, is any or

refund the amount if no dues are payable by the complainants/allottees.

47. Complaint stands disposed of.

48. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.07.2024

HARERA
GURUGRAM