

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

Complaint no. : 4841 of 2022
Date of filing : 15.07.2022
Date of decision : 20.02.2024

1. Vinod Kumar Singh
2. Neeraja Singh

R/o: - D-64, South City-I, Gurugram, Haryana.

Complainants

Versus

M/s Spaze Towers Pvt. Ltd.

Registered Office: A-307, Ansal Chamber-1, 3
Bikaji Cama Place, New Delhi-110066.

Corporate Office: Spazedge, Sector-47, Sohna
Road, Gurugram, Haryana.

Respondent

CORAM:

Shri Ashok Sangwan

Shri Sanjeev Kumar Arora

Member

Member

APPEARANCE:

Shri Ishwar Singh Sangwan

Shri Harshit Batra

Counsel for complainants

Counsel for respondent

HARERA
ORDER
GURUGRAM

1. The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

| S. No. | Particulars | Details |
|--------|--|---|
| 1. | Name of the project | "Spaze Corporate Park", Sector 69 & 70 Gurugram, Haryana |
| 2. | Nature of the project | Commercial complex |
| 3. | DTCP license no. and validity status | 72 of 2013 dated 27.07.2013 for area of 2.72 acres Valid up to 26.07.2017 |
| 4. | RERA registered/ not registered | 393 of 2017 dated 22.12.2017 Valid up to 30.06.2020 |
| 5. | Unit no. | 1106, 11 th floor in tower A [Page 29 of complaint] |
| 6. | Unit area admeasuring | 631 sq. ft. [Page 29 of complaint] |
| 7. | MoU | 11.03.2014 [Page 28 of complaint] |
| 8. | Investment return as per clause 2 of MoU | ...That the First Party shall give an investment return @ Rs.55 per sq. ft. per month w.e.f. 10.03.2014, of the super area till such time the office space is leased out (but subject to clause 7 & 9) on behalf of Second Party by the First Party or maximum of three years from the date of offer of possession of the office space whichever is earlier. [Page 29 of complaint] |

| | | |
|-----|--|---|
| 9. | Due date of possession | Not available in the MoU |
| 10. | Total basic sale consideration | Rs.22,08,500/- [As on page 29 of complaint] |
| 11. | Amount paid by the complainant | Rs.26,23,297/- [Rs.22,08,500/- (As on page 30 of complaint) + Rs.4,14,797/- [paid as per demand raised by the respondent] (EDC/IDC/IFMS/BASIC/Electrification & meter charges) (As on page 39 of complaint)] |
| 12. | Lease deed executed [between the respondent and OFCSPC Worldwide Private Limited] | 30.09.2019 [Page 40 of complaint] |
| 13. | Date of commencement of lease | 01.10.2019 [Page 45 of complaint] |
| 14. | Rent free period | 01.10.2019 till 30.03.2020 |
| 15. | Rent commencement date | 01.04.2020 [Page 45 of complaint] |
| 16. | Rent value as per lease deed | Rs.1,48,11,655/- [Page 40 of complaint] |
| 17. | Arbitration award | 01.10.2020 Termination of lease deed made by the lessee (OFCSPS worldwide) has been declared invalid and interest free refundable security deposit equal to 3 months of prevalent monthly lease rent is not be returned till expiry/earlier termination of lease deed) |
| 18. | Offer of possession | 17.10.2020 [point 5 on page 96 of reply] |

| | | |
|-----|--|---|
| 19. | Occupation certificate | 28.01.2020 [As per additional documents placed on record by the respondent on 13.02.2024] |
| 20. | Completion certificate | 25.06.2021 [As alleged by the respondent on page 3 of reply and as per additional documents placed on record by the respondent on 13.02.2024] |
| 21. | Assured return paid by the respondent to the complainant | Rs.22,90,569/- [W.e.f. April 2014 till September 2019] Note: <ul style="list-style-type: none"> • Return w.e.f. 10.03.2014 till 31.03.2014 was waived of between the parties vide letter dated 01.06.2014 • A cheque of Rs.15,617/- for October 2015 was not encashed by the complainant |

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:

- I. That the respondent in the year 2012 started the publicity on a wide scale of the proposed project by the name and style of "Spaze Corporate Park", Sector-69 & 70, Gurugram in various newspapers as well as vide various banners in and around the vicinity of Sector-69 & 70 Gurugram inviting the people to invest for a better future. Subsequently, the complainants got attracted towards the said marketing strategy and approached the respondents for securing their future and investing in the aforesaid mentioned project.
- II. That vide application form dated 21.02.2014, the complainants intended to invest in the aforementioned project and the complainants paid total

sale consideration amounting to Rs. 22,08,500/- on various dates. The complainant also paid a sum of Rs. 4,14,797/- on 26.11.2019 as demand against revised area of 666 sq. ft. and also paid additional surcharges of Rs. 23,190/- vide cheque dated 23.11.2016.

- III. That the complainants opted for the assured return scheme by entering into MOU dated 11.03.2014 whereby all the covenants pertaining to the payment, total sale consideration, amount of assured return, date of possession, amount received etc. were categorically mentioned. As per clause 2 of the said MOU, the respondent assured the complainant that respondent shall give an investment return @ Rs. 55/- per sq. ft. per month w.e.f. 10.03.2014 of the super area till such time the office is leased out and guaranteed investment return for the month to the complainants by the 10th day of following months. Since, the complainants chose the assured return plan so the respondent demanded 100% of the total sale consideration, amounting to Rs. 22,08,500/- as full and final sale consideration.
- IV. That the complainants were being paid investment return irregularly by the respondent but it is to the utter dismay of the complainants that the payments so made by the respondent were erratic and not on time and were always released after the constant requests of the complainants.
- V. That the premises of the complainants was leased out vide lease agreement dated 30.09.2019 by the respondents to OICSPC Worldwide Private Limited and the same was confirmed by their letter No. SCP/01538 dated 11.10.2019 for a period of nine years commenced

w.e.f. 01.10.2019. It is surprising to the complainants that the respondent had leased out the complainants' allotted premises and getting the leased amount from the tenant, which is crystal clear from the TDS record Form 26AS and only the respondent's tenant deposited only TDS upon the rent amount, whereas, the respondent had not paid a single penny for rent of the said premises to the complainant. After coming to know about the said facts, the complainants requested the respondent number of times to pay the above amount but all in vain reason best known to them. Hence, the complainant is also legally entitled to get the rent of the premises from the respondent obtained by it from the tenant on behalf of the complainants.

- VI. That the complainants paid Rs. 4,14,797/- vide RTGS dated 26.11.2019 as full and final call on the express assurance that after the payment, the premises will be registered in the complainants name. However immediately after payment of the full and final amount, the respondent started ignoring our calls and till date have not responded. Even when the complainants visited their office, they were turned away saying the relevant person is not available.
- VII. That the respondent started to ignore the calls so made by the complainants and always used to linger on the matter on one pretext or the other. The respondent replied to the complainant's emails through its email dated 26.03.2021 stating that "In context to your mail, we have requested our team to get in touch with you regarding your concern. Also for registration process we suggest you to kindly connect Mr. Amit

(7303095524) Looking forward to serve you better." And thereafter when the complainant contacted to Mr. Amit he did not gave a satisfactory reply reason best known to him. The respondent failed miserably in getting the registration of the allotted premises in favour of the complainants and not delivered the physical possession of the allotted premises to the complainants.

VIII. That, the complainants had verbal discussion on telephone and meetings in their offices whereby the complainants enquired about the exact date of the proposed possession of the project and the representative of the respondent assured and confirmed that date of possession will be the date of registration of the lease of the said premises.

IX. That in the meanwhile, the respondent issued a notice for payment of additional VAT, which was supposed to have been paid initially, illegally and unlawfully on dated 17.11.2016. However for the sake of good order, the complainants paid the same. That the respondent kept on lingering the matter for a really long time on one pretext or the other and when the water had gone above the head, the present complaint is being filed before this Hon'ble Authority.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
 - I. **Direct the respondent to handover physical possession of the office space in the project.**
 - II. **Direct the respondent to get the conveyance deed registered.**
 - III. **Direct the respondent to pay Rs.55 per sq. ft. per month from 10.03.2014 to 30.09.2019 with interest.**
 - IV. **Direct the respondent to pay delayed possession charges.**

V. **Direct the respondent to pay rent of the demised premises from 01.10.2019.**

VI. **Direct the respondent to pay the interest on rent.**

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.

a. That the present complaint is not maintainable and is not within the jurisdiction of this Ld. Authority and depicts the complainants' attempt to extort monies from the respondent and hence, is liable to be dismissed.

b. That the complainants are not "allottee" but investor who have booked the unit in question as a speculative investment in order to earn rental income/profit from its resale. The unit in question has been booked by the complainants as a speculative investment. Therefore, no equity lies in favour of the complainants.

c. That the complainants being interested in the real estate development of the respondent under the name and style "Spaze Corporate Park" situated in Sector 69 & 70, Gurugram, Haryana ("**Project**") tentatively applied for the allotment of the commercial shop unit bearing no. 1106 on 11th floor, admeasuring a tentative area of 631 sq. ft. (now 666 sq. ft.) (hereinafter referred as "**Unit**") in the project of the respondent vide application form dated 21.02.2014.

d. That the booking of the unit was made with the sole purpose of earning investment return till the unit is leased out by the respondent.

Consequently, on such terms and conditions, a Memorandum of Understanding dated 11.03.2014 (the “MOU”) was executed between the complainants and the respondent. It is pertinent to mention that the MOU was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties.

- e. That the respondent has completely obliged by its responsibilities as per the said MOU and there remains no non-compliance on part of the respondent. It is the complainants who have failed in fulfilling their obligations and have filed the present case frivolously. Moreover, it is also submitted that not only the occupation certificate but the completion certificate has also been received by the respondent on 25.06.2021.
- f. That the complainants are praying for the relief of investment return/assured returns which is beyond the jurisdiction that this Id. authority. That from the bare perusal of the Act, it is clear that the said Act provides for three kinds of remedies in case of any dispute between a developer and allottee with respect to the development of the project as per the agreement. That such remedies are provided under section 18 of the Act for violation of any provision of the Act. That the said remedies are of "refund" in case the allottee wants to withdraw from the project and the other being "interest for delay of every month" in case the allottee wants to continue in the project and the last one is for compensation for the loss occurred by the allottee. That it is relevant to

mention here that nowhere in the said provision, the Ld. Authority has been dressed with jurisdiction to grant "Investment/Assured Returns".

- g. That the banning of Unregulated Deposit Scheme Act, 2019 ("**BUDS Act**") was notified by the Government of India on 31.07.2019 effective from 21.02.2019. As a consequence of the above, the assured return linked to sale consideration under the said MOU falls under the ambit of deposit and the same falls under the ambit of Unregulated Deposit Scheme. In pursuant to the provisions of section 3 of the BUDS Act, all unregulated deposit schemes have been barred and all such transactions which fall under the ambit of unregulated deposit schemes have to be stopped. Thus, the respondent was barred under section 3 of BUDS Act from making any payment towards assured return in pursuance to an "Unregulated Deposit Scheme".
- h. That further, the issue pertaining to the relief of assured return is already pending for adjudication before the Hon'ble Punjab and Haryana High Court wherein, the Hon'ble High Court in the matter of '**Vatika Limited vs Union of India and Anr.**' in CWP No. 26740 of 2022, had issued notice to the respondent parties and had also restrained the competent authorities from taking any coercive actions against the respondent in this matter in criminal cases for seeking recovery against the deposits till the next date of hearing.

Thus, the complainants cannot, under the garb of said the agreement, seek enforcement or specific performance of an Investment Return Scheme before this Hon'ble Authority which is specifically barred and

banned under section 3 of the BUDS Act, hence the present complaint deems dismissal.

- i. That as per clause 2 of MOU, the payment of assured return had to be made from 10.03.2014 till the unit is leased out. In this regard, it is noted that:

*"Return from 10.03.2014 till 31.03.2014 was waived off by mutual consent between the parties (Letter dated 01.06.2014 noting the waiver of payment of assured return of March 2014 is annexed and marked as **Annexure R5.**)*

*Return from April 2014 till September 2019 has been duly paid by the Respondent (The Investment Return sheet showing the payment from April 2014 till September 2019 is annexed and marked as **Annexure R6.**)"*

- j. That in respect of payment of Investment Return of March 2014, the letter dated 01.06.2014 records the mutual understanding of the parties for non-payment of the same. Thereafter, continued assured returns from April 2014 till September 2019, totalling to Rs. 22,90,596 (Gross amount without TDS) have been paid by the respondent. However, it is pertinent to note that a cheque of Rs. 15,617 for October 2015 was not encashed by the complainants and here remains no fault of the respondent in this regard. That after making the said payment, no grievance whatsoever remains as the unit was leased out to OFCSPC Worldwide Pvt. Ltd. on 30.09.2019.
- k. That the binding terms and conditions between the parties are of the MOU. The entire reading of the MOU reveals that the intention of the parties was payment of investment return pre-lease of the unit and the leasing of the unit.

- l. That there is no categorical obligation of payment of lease rent by the respondent and as per clause 16(a), the lessee may pay the rent through the respondent but does not create any static obligation of the said payment. Moreover, clause 16(e) categorically notes that in case of non-payment of lease rent, the complainants have remedy against the lessee and not the respondent. The obligation of the respondent was only limited to getting the unit leased out, which was duly fulfilled by the respondent. In such a circumstance, no obligation of the respondent persists and the present case should be dismissed.
- m. That it is a matter of fact and record that the unit was leased out to OFCSPC Worldwide Pvt. Ltd. ("OFCSPC") on 30.09.2019. The lease deed *ex facie* shows that although the same was effective from 01.10.2019 but OFCSPC was given a rent free period till 30.03.2020 and thereafter, the commencement of rent had to be from 01.04.2020. The minimum lock in period of the lease was of 1 year and the lease was of 3 years, further extendable for 2 more terms of 3 years each.
- n. That although the unit was leased effectively from 01.10.2019, however, no rent in lieu of the same has been collected. Due to certain disputes between the respondent and the lessee, OFCSPC, the lease deed was terminated by the lessee and consequently, OFCSPC initiated arbitration proceedings to get the deed terminated. The arbitration proceedings were carried on before the Hon'ble Justice Deepak Verma (Retired) and the Ld. Arbitrator passed an award dated 01.10.2020.

- o. That consequently, after the first lease, the respondent offered the physical possession to the complainants on 17.10.2020. However, the same was never communicated/confirmed by the complainants. The complainants being themselves at fault, have frivolously filed the present complaint, which should be dismissed.
- p. That the facts and circumstances noted above, categorically show that the unit was leased out in September 2019, until when, the complete investment return was paid. After the termination of the lease in October 2020, the physical possession of the unit was offered by the respondent, without any delay whatsoever. In such a circumstance, there is no delay whatsoever, on part of the respondent and it is the complainants who have failed to come forward and take the physical possession or convey their consent in terms with offer letter dated 17.10.2020. There arose no cause of action whatsoever in the present instance. That the respondent has not defaulted the agreement or the Act, in any manner whatsoever.
- q. That without prejudice to the aforementioned, it is to be noted that the development and implementation of the said project was hindered on account of several orders/ directions passed by various authorities/ forums/courts.
- r. That the respondent, despite such delay, earnestly fulfilled its obligation and completed the project as expeditiously as possible in the facts and circumstances of the case. The various circumstances beyond the control of the respondent are the factors responsible for the delayed development of the project. The respondent cannot be penalized and

held responsible for the default of its customers or due to force majeure circumstances. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

- s. Without prejudice to the rights of the respondent in the above-stated contentions, delayed interest, if any, has to be calculated only on the amounts deposited by the allottees/complainants towards the basic principal amount of the unit in question and not on any amount credited by the respondent, or any payment made by the allottees/complainants towards Delayed Payment Charges (DPC) or any taxes/statutory payments or towards the assured returns etc. That additionally, the assured return of Rs. 22,90,596/- already paid to the complainants need to be adjusted from the DPC to be paid.

In view of aforementioned facts and submissions made, it is submitted that the captioned complaint is frivolous, vague and vexatious in nature. The captioned complaint has been made to injure and damage the interest and reputation of the respondent and that of the project.

Therefore, the instant complaint is liable to be dismissed *in limine*.

7. 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 these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. 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

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee 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.

11. 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 complainants at a later stage.

F. Findings on objections raised by the respondent

F.I Objection regarding maintainability of complaint on account of complainant being investor

12. The respondent took a stand that the complainants are investors and not consumers and 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. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he 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 allotment letter, it is revealed that the complainant is buyer's, and they have paid a considerable amount to the respondent-promoter towards purchase of unit in its project. 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;"

13. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to 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". Thus, the contention of the promoter that

the allottee being investor are not entitled to protection of this Act also stands rejected.

F.II Pendency of petition before Hon'ble Punjab and Haryana High Court regarding assured return

14. The respondent has raised an objection that the Hon'ble High Court of Punjab & Haryana in CWP No. 26740 of 2022 titled as "Vatika Limited Vs. Union of India & Ors.", took the cognizance in respect of Banning of Unregulated Deposits Schemes Act, 2019 and restrained the Union of India and the State of Haryana from taking coercive steps in criminal cases registered against the Company for seeking recovery against deposits till the next date of hearing.
15. With respect to the aforesaid contention, the authority place reliance on order dated 22.11.2023 in CWP No. 26740 of 2022 (supra), whereby the Hon'ble Punjab and Haryana High Court has stated that "*... there is no stay on adjudication on the pending civil appeals/petitions before the Real Estate Regulatory Authority as also against the investigating agencies and they are at liberty to proceed further in the ongoing matters that are pending with them. There is no scope for any further clarification.*" Thus, in view of the above, the authority has decided to proceed further with the present matter.

G. Findings on the relief sought by the complainants

G.I Possession and conveyance deed

16. During proceedings dated 28.11.2023, the counsel for respondent stated that the respondent is ready to handover the possession or to put it on further lease if the complainant so wishes and further assured to intimate the date of handing over of possession within next 3 days. The complainant

allottees were to take the possession and execute the conveyance deed in next 90 days after making payment of stamp charges.

17. In compliance of the aforesaid orders, the counsel for the respondent has placed on record requisite documents vide which the respondent has mentioned specific date and time for the complainants to come forward to take physical possession.
18. However, during proceedings dated 16.01.2024, the complainants stated that when they went to obtain the possession, the respondent has avoided the handover and are also asking the complainants to sign the BBA which is not in terms of the MOU. Further, the respondent was directed to clarify the matter within a week. Despite aforesaid directions, the respondent has failed to clarify the same and in absence of any response from the respondent, inference is drawn against the respondent.
19. The authority is of the view that the respondent vide letter dated 17.02.2020 has offered the complainant the actual physical possession of the subject unit. Further, the respondent-promoter is required to hand over the possession of the subject unit after obtaining of occupation certificate/CC/part CC from the competent authority as per obligations under section 11(4) (b) read with section 17 of the Act, 2016 and thereafter, the complainants-allottees are obligated to take the possession within 2 months as per section 19 (10) of the Act. The occupation certificate has been received by the respondent and thereafter, completion certificate has also been received. Thus, the respondent is directed to handover possession of

the subject unit to the complainants within 2 months from the date of this order.

20. Further, the respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/ completion certificate from the competent authority as per provisions of section 17 of the Act and the complainants-allottees are under obligation under section 19(11) of the Act to participate towards the registration of the conveyance deed as provided under section 17 of the Act. In view of above, the respondent shall execute the conveyance deed of the allotted unit within 90 days upon payment of requisite stamp duty by the complainants as per norms of the state government.

G.II Assured return

21. The complainants are seeking unpaid assured returns on monthly basis as per the MOU dated 11.03.2014 at the rates mentioned therein. It is pleaded by the complainants that the respondent has not complied with the terms and conditions of the said MOU. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same by taking a plea that the same is not payable in view of enactment of the Banning of Unregulated Deposit Schemes Act, 2019 (hereinafter referred to as the Act of 2019), citing earlier decision of the authority (Brhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd., complaint no 141 of 2018) whereby relief of assured return was declined by the authority. The authority has rejected the aforesaid objections raised by the respondent in CR/8001/2022 titled as Gaurav Kaushik and anr. Vs. Vatika Ltd. wherein the

authority while reiterating the principle of prospective ruling, has held that the authority can take 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. Further, it was held that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the promoter is liable to pay that amount as agreed upon and the BUDS Act, 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per section 2(4)(I)(iii) of the Act of 2019. Thus, the plea advanced by the respondent is not sustainable in view of the aforesaid reasoning and case cited above.

22. Moreover, as far as plea of the respondent regarding order passed by Hon'ble High Court of Punjab and Haryana in CWP no. 26740 of 2022 restraining the competent authority from taking any coercive action against the respondent is concerned, the said objection was itself dealt by the Hon'ble High Court vide order dated 22.11.2023 wherein it was held that "*...there is no stay on adjudication on the pending civil appeals/petitions before the Real Estate Regulatory Authority as also against the investigating agencies and they are at liberty to proceed further in the ongoing matters that are pending with them.*" In view of the aforesaid order, the authority is proceeding with the present complaint as such.
23. 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.

24. The builder is liable to pay that amount as agreed upon and cannot take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement/MoU defines the builder/buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the said memorandum of understanding.
25. In the present complaint, the assured return was payable as per clause 2 of MOU, the assured return was payable @ Rs.55/- per sq. ft. per month w.e.f. 10.03.2014, of the super area till such time the office space is leased out on behalf of the complainant by the respondent or maximum of three years from the date of offer of possession of the office space whichever is earlier.
26. The respondent is raising a plea that it is not liable to pay assured return to the complainants as it has paid assured return till September 2019 which is the date when lease deed was executed. However, the said plea of the respondent is not sustainable and devoid of merits. It is pertinent to note that lease deed in the present case was effectuated by the respondent in favour of OFCSPC Worldwide Private Limited on 30.09.2019. The said lease ran into dispute and an arbitration award was passed by the sole arbitrator on 01.10.2020. It is pertinent to mention here that the complainants herein

were not party of the said arbitration proceedings and it is evident from para 76 & 77 of the arbitration award dated 01.10.2020, *the respondent has not shown, much less proved, that it had attempted to mitigate the loss by either bringing in any prospective tenant who was ready and willing to occupy the premises had the claimant vacated the same, or that it had at least made the efforts to approach prospective tenants offering the premises on rent.* As per the aforementioned arbitration award, the respondent herein was held to be not entitled to seek payment of rent for the lock-in-period. The authority is of the view that the lease has been rendered ineffectual vide the said arbitration award dated 01.10.2020 and the complainants herein were not party to the said arbitration proceedings. As a consequence, the complainant has neither been paid assured return nor lease rent for the period after the alleged lease was executed. In light of the reasons mentioned above, this authority is of the view that as per the MoU dated 11.03.2014, it was obligation on the part of the respondent to pay the assured return. It is necessary to mention here that the respondent has failed to fulfil its obligation as agreed inter se both the parties in MoU dated 11.03.2014. Accordingly, in the interest of natural justice, the liability of the respondent to pay assured return as per MOU is still continuing. The respondent has paid an amount of Rs.22,90,569/- towards assured return to the complainant w.e.f. April 2014 till September 2019. However, assured return w.e.f. 10.03.2014 till 31.03.2014 was waived of between the parties vide letter dated 01.06.2014 and a cheque of Rs.15,617/- for October 2015 was not encashed by the complainant. Therefore, considering the facts of the present

case, the respondent is directed to pay the amount of assured return in terms of clause 2 of MoU dated 11.03.2014 at the agreed rate i.e., @ Rs. 55/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., **October 2019 till 17.10.2023 i.e., maximum of three years from the date of offer of possession (17.10.2020) of the office space.** Moreover, the amount of rent security for 3 months [New area 666*55*3] already paid by the respondent vide demand letter dated 22.10.2019 shall also be adjusted to the amount payable by the respondent to the complainants in terms of the above direction of this authority.

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

27. The authority observes that as per the MOU executed between the parties, no time period has been committed by the respondent for handing over the physical possession of the subject unit. Therefore, the due date is calculated as per the judgment passed by the Hon'ble Supreme Court in case titled as *Fortune Infrastructure and Ors. Versus Trevor D 'Lima and Ors (12.03.2018)* wherein the Apex Court observed that *"a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract."* In view of the above-mentioned reasoning, the date of signing of MoU dated 11.03.2014, ought to be taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 11.03.2017.

28. However now, the proposition before it is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges?
29. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the BBA or MoU. The assured return in this case is payable as per clause 2 of the MoU. The rate at which assured return has been committed by the promoter is Rs. 55/- per sq. ft. of the super area per month which is more than reasonable in the present circumstances. If we compare this assured return with delayed possession charges payable under proviso to section 18(1) of the Act, 2016, the assured return is much better i.e., assured return in this case is payable is Rs. 36,630/- per month whereas the delayed possession charges are payable approximately is Rs. 23,179/- per month. By way of assured return, the promoter has assured the allottee that he would be entitled for this specific amount till completion of construction of the said building. Moreover, the interest of the allottees is protected even after the completion of the building as the assured returns are payable for the first 3 years after the date of offer of possession or till the date of said unit/space is put on lease, whichever is earlier. 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.
30. 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 date of offer of possession, then the allottees 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, assured return being higher is granted to the complainant herein in terms of the aforesaid direction of the authority.

G.IV Direct the respondent to pay rent of the demised premises from 01.10.2019 and interest on rent.

31. The counsel for the complainants states that the complainants have made full and final payment of Rs.26,23,297/- against the unit allotted to the respondent and the respondent has neither handed over the possession of the unit nor has paid lease amount (the unit is stated to be on lease w.e.f. 30.9.2019).
32. The counsel for the respondent states that an amount of Rs.22,90,596/- as assured return to the complainant has been paid. He draws attention to clause 2 of the MoU dated 11.03.2014, as per which assured return is also to be paid from the date of signing till first lease of the unit or maximum of three years. So far as the lease of the property is concerned, he invites attention to clause 16 of the MoU as per which the liabilities of respondent have been clearly laid out. The first lease of the property ran into a dispute and finally an arbitration orders were passed on 01.10.2020 vide which in para 77, the respondent was not entitled to seek payment of rent for the lock-in period from the complainant-lessee and the lessee vacated the property after one year of the lease. Subsequently, the property was offered to the complainant vide offer of possession dated 17.10.2020.
33. The counsel for the complainant invites attention to lease deed dated 30.09.2019 vide which the property has been leased out w.e.f. 01.10.2019 vide which the security deposit of Rs. 4.44 crores was to be paid by the lessee and the payment of rent was to be start on 01.04.2020. He further states that

no valid offer of possession has been made by the respondent and no occupation certificate has been communicated to him till date.

34. The authority has delineated in the foregoing paras that the lease deed dated 30.09.2019 remained ineffectual. It is also evident from the arbitration award dated 01.10.2020 that the respondent herein was found not entitled to the lease rent for the remaining lock-in period. Thus, in view of the same, the said relief of lease rent and interest thereon cannot be granted.

H. Directions of the authority

35. 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 amount of assured return at the agreed rate i.e., @ Rs. 55/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., October 2019 till 17.10.2023 i.e., maximum of three years from the date of offer of possession (17.10.2020) of the office space. Moreover, the amount of rent security for 3 months [New area 666*55*3] already paid by the respondent vide demand letter dated 22.10.2019 shall also be adjusted to the amount payable by the respondent to the complainants in terms of the above direction of this authority.
- ii. The respondent is directed to pay the outstanding accrued assured return amount 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 @ 8.85% p.a. till the date of actual realization.
- iii. The respondent is directed to handover possession of the subject unit to the complainants within 2 months from the date of this order.



iv. The respondent shall execute the conveyance deed of the allotted unit within 90 days upon payment of requisite stamp duty by the complainants as per norms of the state government in terms of section 17 of the Act.

36. Complaint stands disposed of.

37. File be consigned to registry.


(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.02.2024


(Ashok Sangwan)

Member