

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

Complaint no. : 1698 of 2023
Date of decision : 14.08.2024

1. Prerna Ramawat
2. Devender Saini
3. Kanta Saini
R/o ST No.2-3, 3rd Chowk, New Suraj nagarj,
Abohar, Ferzepur .

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. Rajinder Singh (Advocate)
Sh. Venkat Rao (Advocate)

Complainants
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
5.	Unit no.	08, Floor-3rd (As on page no. 45 of complaint)
6.	Unit area	250 sq.ft. [Super area] (As on page no. 45 of complaint)
7.	Builder Buyer Agreement	07.01.2015 (As on page no. 40 of complaint)
8.	Memorandum of understanding	25.12.2014 (As on page no. 19 of complaint)

9.	Possession clause	<p>Clause 3.</p> <p><i>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.</i></p> <p>[Emphasis supplied]</p>
10.	Due date of possession	<p>25.12.2017</p> <p>[Calculated 36 months from the date of execution of M.o.u dated 25.12.2014]</p>
11.	Assured return	<p>Clause 4</p> <p>That against the total basic sale consideration of Rs.12,75,000/- (Rupees Twelve lakh Seventy Five Thousand only) determined as per Clause 3 above, the Allottee(S) has, paid unto Company upon and/or prior to the execution of this MOU, an amount of Rs.13,22,277/- (Rupees Thirteen lakj Twenty Two Thousand Two Hundred Seventy Seven only) vide cheque no. 974094 and 974093 dated 27.11.2014 drawn on State bank of india, towards advance/part consideration of the unit, the receipt thereof, Company hereby admits and acknowledges.</p> <p>The Company shall pay a monthly assured return of Rs.22,500/- (Rupees Twenty Two Thousand Five Hundred only) on the total amount received with effect from 25.12.2016 after deduction of Tax at Source and service tax, cess or</p>



		any other levy which is due and payable by the Allottee(s) to the Company in accordance with the payment Schedule annexed as Annexure I. The monthly assured return shall be paid to the Allottee(S) from 25.12.2016 onwards till the commencement of first lease on the said unit. [Emphasis supplied] (As on page no. 23 of complaint)
12.	Total sale consideration	Rs. 12,75,000/- (As on page no. 23 of complaint)
13.	Total amount paid by the complainant	Rs. 13,22,277/- (As on page no. 23 of complaint)
14.	Lease deed	24.07.2020 (As on page no. 93 of reply)
15.	Payment request on account of VAT	22.01.2020 30.10.2020 (As on page no. 135 of reply)
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the complainants Mrs. Prerna Ramawat and Mr. Devender Saini purchased the unit on 25.12.2014. Later on 04.09.2017, Mrs. Kanta Saini was also added as a co-applicant. The respondent i.e., M/S Neo Developers Private Limited is engaged in the business activities

relating to construction, development, marketing & sales of various types of residential & commercial properties.

- II. That in or around November 2014, the complainants met the representative of the respondent who explained the project to them. Later, the representatives of the respondent stated that the project consists of multiple towers having dedicated space for retail, offices, restaurants, food court, service apartment, hyper-mart and cinema etc.
- III. That the respondent assured the complainants that they have already obtained all the mandatory permissions/clearances to construct the project and the same would be constructed strictly in conformity with the sanctioned plans. That the construction of the project would be completed within 36 months of purchasing the unit.
- IV. That the respondent induced the complaints to purchase the unit under the Assured Return Plan wherein the respondent undertook to make the payment at the rate of Rs.90 per sq. ft. per month for the area purchased if full payments towards the unit are made by the complainants at the time of booking or at the time of execution of Memorandum of Understanding (MOU).
- V. That the complainants entered into a Memorandum of Understanding with the respondent on 25.12.2014 and subsequently a Builder Buyer Agreement was executed on 07.01.2015. The complainants have paid a sum of Rs.13,22,277/- towards the consideration of the

unit, through two cheques, firstly vide cheques no. 974094 and 974093 which were duly accepted by the respondent. It was agreed under the MOU that a monthly return of Rs.22,500/- shall be payable as Assured Return from 25.12.2016.

- VI. That the respondent sent an Email on 16.12.2015 raising the cumulative demand of Rs.4,74,000/- of EDC and IDC for unit no. 06,07,08,09 on 3rd floor of the project and Rs.1,18,500 was charged for each unit. The said demand was duly fulfilled by the complainants by making the cumulative payments of Rs.4,74,000/- through monthly assured return payment.
- VII. That the respondent demanded VAT from the complainants several times in respect of the same unit despite the fact it was paid at the time of very first demand. The respondent raised the demand towards VAT amounting to Rs.69,675/- on 30.03.2017 and the same was paid through adjusting the said amount of VAT in monthly assured return amount.
- VIII. That the truth of the assurances made by the respondent surfaced when the respondent started delaying the monthly assured returns and ultimately, the payments of assured return were completely stopped and are due since July, 2019. That the mala fide intentions of the respondent also became conspicuous when the respondent communicated its unilateral decision of not paying any assured return till the completion of the project.

- IX. That the payment towards VAT was made by buyers in 2017 has not been deposited with the concerned authorities by the respondent and due to the said reason, the demands of VAT are being made again and again from the buyers.
- X. That the respondent sent an email dated 09.04.2020 to the complainants in order to oblivate itself from its responsibility of paying monthly assured return. The respondent is forcing the complainants to sign the "Lease Assignment Form" by which the respondent intends to lease out the unit to a third party and has also inserted a clause according to which after the execution of Lease Assignment Form, the respondent will be obliterated from its responsibility to pay the monthly Assured Return.
- XI. That despite assurance of completion of construction of the project within 36 months of purchasing the unit or from the commencement of construction, the construction has still not been completed even after passage of almost 8 years. The structure of only office building is constructed but which is also nowhere near to completion. The building wherein food court and restaurants situates has been constructed up to 2nd floor only and there is no sign of construction of the tower wherein INOX nine-screen cinema, serviced apartment, infotainment and entertainment zone as were shown in the brochure. It has also come into complainants' knowledge that the respondent has not even received the license

from the concerned authorities to construct the tower/building besides office building. The respondent has further cheated by selling food court and restaurant units to other buyers on 2nd and 5th floor as well.

- XII. That the respondent has no intention to complete the project as no permission is available to construct the project beyond the office tower. The complainants have filed a complaint before the Economics Offences Wings Delhi on 16.03.2022 wherein FIR No-0046/2022 has been filed under sections 406/420/120B against the respondent.
- XIII. That no fresh construction has been carried out in the project since 2019. The completion certificate of the respondent has been denied on several occasion, and on 15.12.2021 the representative of the respondent has admitted before the STP, Gurugram that the project is not complete and they had withdrawn the application seeking completion certificate in the year 2020.
- XIV. That the complainants are constrained to file the present complaint seeking the payment of assured return at the rate of Rs.90 per sq feet amounting to Rs.22,500 for unit admeasuring 250 sq.ft., since July 2019 till the handing over the possession/ lease out of the property after the completion of the construction.

C. Relief sought by the complainant:

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

- i. Direct the respondent to pay Assured Returns @Rs.90 per sq.ft. per month amounting to Rs.22,500/- from July 2019 till handing over the possession/leasing out the property after completion.
 - ii. Direct the respondent to execute the Sale Deed after the completion of the project in favor of the complainant.
 - iii. Restrain the respondent from entering the lease deed with 3rd party till the completion of project and handing over the possession to the complainant.
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 Act 2016 was passed with the sole intention of regularisation of real estate projects, and the dispute resolution between builders and buyers and the reliefs sought by the complainants cannot be construed to fall within the ambit of the Act. That the complainants are investors and not allottees.
 - II. The complainants with the intent to invest in the real estate sector as an investor, approached the respondent and inquired about the project i.e., "NEO SQUARE", situated at Sector-109, Gurugram, Haryana. That after being fully satisfied with the project and the

approvals thereof, the complainants decided apply and filed an application form on 15.12.2014, whereby seeking allotment of priority no. 8, admeasuring 250sq.ft of super area on the 3rd floor of the restaurant/food court space having a basic sale price of Rs. 12,75,000/- and opted for the investment return plan.

- III. That a Memorandum of Understanding dated 25.12.2014 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 said project and leasing of the unit/space thereof. As per the mutually agreed terms between the complainants and the respondent, the returns were to be paid from 25.12.2016 till the commencement of first lease. It is also submitted that as per clause 4 of the MOU, the complainants had duly authorised the respondent to put the said unit on lease.
- IV. That the complainants voluntarily executed the Buyer Agreement dated 07.01.2015 after having full knowledge and being well satisfied and conversant with the terms and conditions of the Buyer Agreement.
- V. That the respondent had been paying the committed return of Rs.22,500/- for every month to the complainant without any delay since 25.12.2016. It is to note, that as on July 2019, the complainants had already received an amount of Rs.6,34,500 as assured return. 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.
- VI. That the obligation of payment of assured return by the respondent to the complainants was only till the commencement of the first lease on the unit. The first lease has already been executed with M/s Ayan Foods on 24.07.2020. Thereby, the respondent has duly fulfilled its obligations in terms of the MOU. The since as per the terms of the MOU, the respondent has already fulfilled its obligation of payment of assured return and that the first lease has also been executed, the present complaint becomes infructuous.
- VII. That after the commencement of the First Lease, the respondent has duly intimated the complainants about the same vide letter dated 01.10.2020 and also by various telephonic conversations regarding the same and have further sent a Letter for Assignment of Lease form to the complainants to come forward and sign the lease assignment, as had been agreed in the MOU. However, the complainants did not come to sign the lease assignment and therefore failed to fulfil their part of obligations. That, since the complainants did not come forward to sign the lease assignment, the respondent sent reminder letters dated 10.12.2020 and 07.12.2021 to sign the Lease Assignment Form.
- VIII. That in the Memorandum of Understanding, there was never any pre-condition of obtaining the Occupation Certificate for the execution of the Lease deed. The respondent has already executed the first lease deed and duly sent the Invitation to sign lease assignment to the

complainants with reminders, as per the terms of the MOU. However, the complainants have failed to come forward.

- IX. 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 said project. Infact there is no bar by any statutory provision on entering into such understanding. There have been numerous 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.
- X. In view of the above said submissions, it is evident that executing a lease deed before the completion of a project is a common practice adopted by the developers/promoters in the real estate sector. Therefore, the respondent cannot be held liable to pay any assured returns to the complainants after the commencement of the first lease, any payment thereof in fact will also be contrary to the prevailing laws and violation thereof.
- XI. That the relief of assured return is not maintainable before the 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.

- XII. That the Authority is dressed with the jurisdiction to adjudicate upon all the complaints arising out of failure of either party to fulfil the terms and conditions of the Agreement for Sale (Buyer's Agreement). However, in the present matter the complainants are relying upon the terms of MOU which is a distinct agreement than the Buyer's Agreement and thus, the MOU is not covered under the provisions of the RERA Act, 2016. That the said complaint is not maintainable on this basis that there exists no relationship of builder-allottee in terms of the MOU, by virtue of which the complainants are raising their grievance.
- XIII. That as per clause 3 of the MOU, the respondent was obligated to complete the construction of the said project within 36 months from the date of execution of the MOU or from the start of construction, whichever is later and apply for grant of completion/occupancy certificate. It is pertinent to mention that the Authority in complaint bearing no. **1328 of 2019** titled as "**Ram Avtar Nijhawan vs M/s Neo Developers Pvt Ltd**", pertaining to the same project i.e., '**NEO Square**' vide order dated 05.09.2019 held that the due date of start of construction for the project was 15.12.2015. The Authority also granted a period of 6 months as grace period. Accordingly, the due date of delivery of possession in the present case is 36 months + 6 months (grace period) to be calculated from 15.12.2015 and the due date of possession in the instant case comes out to be 15.06.2019.
- XIV. That the complainants as per the records had only paid Rs.15,10,452/- against the total due amount of Rs. 16,63,826/- It is to

be noted that there is still an outstanding due of Rs.1,53,374/- which is to be paid by the complainants against the unit booked.

- XV. That the respondent is raising the VAT demands as per government regulations. That the rate at which the respondent is charging the VAT amount is as per the provisions of the Haryana Value Added Tax Act 2003. Accordingly, the VAT amounts have been demanded from the complainants as the same has been assessed and demanded by the competent authority.
- XVI. That upon failure to pay the outstanding dues against EDC/IDC dated 16.12.2015 and VAT dues dated 30.03.2017, the complainants requested the respondent to adjust the said outstanding amount against the Assured Return payments from April 2017 onwards till the said demands of EDC/IDC and VAT becomes nil.
- XVII. That the respondent had already paid Rs.6,34,500 as Assured Return to the complainants till date after adjustment of EDC/IDC and VAT dues against the Assured Return payments, against the sale consideration of Rs.16,63,826/- of the unit.
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 submission 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.

F. Findings on the objections raised by the respondent.

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

11. The respondent/promoter has raised the contention that the delivery of possession 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 25.12.2017. 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 the aforesaid reasons and 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 assured return @Rs.22,500/- from July,2019 till the handing over of possession.

12. The complainant booked a unit in the project of the respondent and the MOU was executed on 15.12.2014. The basic sale consideration of the unit was Rs.12,75,000/- out of which the complainant has paid Rs.13,22,277/-. The complainant in the present complaint seeks relief for the pending assured return.

• Assured return

13. 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.

14. The M.O.U dated 21.03.2013 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 objects of the Act. Therefore, the promoter and allottee would be bound by the obligations contained in the memorandum of understanding 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 25.12.2014 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.

15. 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 2(4) of the above mentioned Act defines the word 'deposit' as *an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include:*
- (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 property as specified in terms of the agreement or arrangement.*
16. 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 an immovable property*
 - (ii) *as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;*
17. 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.
18. 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.
19. 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.
20. It is not disputed that the respondent is a real estate developer, and it had not obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received

by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2015 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the latter from the former against the immovable property to be transferred to the allottee later on.

21. The Authority under this Act has been regulating the advances received under the project and its various other aspects. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the 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 24.07.2020 thus holds no relevance here.
22. Hence, the Authority directs the respondent/promoter to pay assured return to the complainant at the rate of Rs.22,500/- per month from the date i.e., 25.12.2016 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.II. Direct the respondent to execute sale deed after completion of the project in favour of the complainants.

23. Under Section-17(1) proviso of the Act, 2016, the respondent/promoter is under an obligation to execute the registered conveyance deed in favour of the allottee/complainant within three months from the date of issue of occupancy certificate. The relevant provision is reproduced below:

Section 17 . Transfer of title

- (1) the promoter shall execute a registered conveyance deedlocal laws:*

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

[Emphasis supplied]

24. The Authority hereby directs the respondent to execute the conveyance deed in favour of the complainants within 3 months after obtaining the occupation certificate from the competent authorities.

G.III. Restrain the respondent from entering into lease deed with third party till the completion of the project.

25. The Authority is of the view that since the occupation certificate in respect to the project has not been received yet and without receiving the occupation certificate, the premises cannot be presumed to be fit for occupation. The respondent is directed to not force the complainants to execute any lease deed prior to obtaining the occupation certificate.

H. Directions of the authority

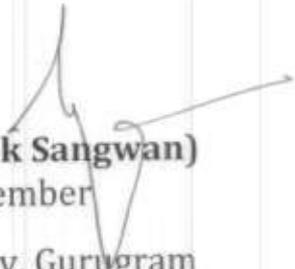


36. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to pay the arrears of amount of assured return at the rate i.e., Rs.22,500/- per month from the date i.e., 25.12.2016 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 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 25.12.2014 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 @9% p.a. till the date of actual realization.
- iii. The respondent is directed to execute the registered conveyance deed in favour of the complainants within 3 months from the date of obtaining the occupation certificate.
- iv. The respondent is directed to not force the complainants to execute any lease deed prior to obtaining the occupation certificate.
- v. The respondent shall not charge anything from the complainants which is not the part of the agreement of sale.

37. Complaint stands disposed of.

38. File be consigned to registry.


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.08.2024



HARERA
GURUGRAM