



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

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| Complaint no. : | 415 of 2022 |
| Date of filing : | 01.02.2022 |
| Date of decision : | 24.09.2024 |

1. Yashpal Kapur
2. Sanjog Kapur

Both RR/o: 7/16, Roop Nagar, New Delhi-110007

Complainants

Versus

M/s Vatika Ltd.

Regd. Office: 7th floor, Vatika Triangle, Sushant Lok-1,
M.G. Road, Gurugram, Haryana-122002.

Respondent

| | |
|-------------------------|--------------------|
| CORAM: | |
| Shri. Arun Kumar | Chairperson |
| Shri. Vijay Kumar Goyal | Member |

Appearance:

Shri Pawan Kumar (Advocate)

Ms. Ankur Berry (Advocate)

Complainants

Respondent

ORDER

1. The present complaint has been filed by the complainants-allottees in Form CRA 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 to the allottee as per the agreement for sale executed inter se them.



A. Project and unit related details:

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), 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 | Vatika INXT City Centre at Sector 83, Gurugram, Haryana |
| 2. | Allotment letter | Not annexed |
| 3. | Date of builder buyer agreement | 13.07.2010 [Page 12 of complaint] |
| 4. | Addendum to BBA dated 13.07.2010 executed on | 13.07.2010, annexure A of BBA [Page 31 of complaint] |
| 5. | Unit no. as per the BBA dated 13.07.2010 | 1744, 17th floor, tower-A, in Vatika Trade Center, admeasuring 1350 sq. ft. [Page 15 of complaint] |
| 6. | Shifting of unit vide letter dated to Vatika INXT City Centre | 17.09.2013 [pg.6 of reply by complainant to application] |
| 7. | New unit no. | 521, 5 th floor, block-B, in Vatika INXT City Center, Sector-83, and Gurugram [pg.6 of reply by complainant to application] |
| 8. | Possession clause as per clause 2 of the BBA dated 13.07.2010 | <i>The Developer will complete the construction of the said complex within three (3) years from the date of execution of this agreement. Further, the</i> |



| | | |
|-----|---|--|
| | | <p><i>Allottee has paid full sale consideration on signing of this agreement, the Developer further undertakes to make payment of Rs refer annexure-A (Rupees.....) per sq. ft. of super area per month by way of committed return for the period of construction, which the Allottee duly accepts. In the event of a time overrun in completion of the said complex the Developer shall continue to pay to the Allottee the within mentioned assured return until the unit is offered by the Developer for possession.</i></p> <p>[Page 15 of complaint]</p> |
| 9. | Due date of handing over possession as per BBA dated 13.07.2010 | 13.07.2013 (calculated from the date of execution of BBA) |
| 10. | Assured return/ committed return as per addendum to BBA | <p style="text-align: center;">ANNEXURE A ADDENDUM TO THE AGREEMENT DATED 13.07.2010</p> <p>The unit has been allotted to you with an assured monthly return of Rs. 65/- per sq. ft. However, during the course of construction till such time the building in which your unit is situated is ready for possession you will be paid an additional return of Rs. 6.50/- per sq. ft. Therefore, your return payable to you shall be as follows:</p> <p>This addendum forms an integral part of builder buyer Agreement dated 13.07.2010</p> <p>A. Till Completion of the building: Rs. 71.50/- per sq. ft.</p> <p>B. After Completion of the building: Rs. 65/- per sq. ft.</p> |



| | | |
|-----|--|--|
| | | You would be paid an assured return w.e.f. 15.01.2011 on a monthly basis before the 15 th of each calendar month. [Page 31 of complaint] |
| 11. | Completion of construction for Block | 29.03.2016 [As alleged by the respondent at page 11 of reply] |
| 12. | Total sale consideration as per clause 1 of BBA dated 13.07.2010 | Rs. 54,00,000/- [Page 15 of complaint] |
| 13. | Vide letter dated 30.09.2010 | The respondent has communicated that Rs.55,890/- is shortfall against the said consideration. [Page 39 and 40 of complaint] |
| 14. | Amount paid by the complainant as per clause 2 of BBA dated 13.07.2010 | Rs. 54,00,000/- [Page 15 of complaint] |
| 15. | Offer of possession | Not offered |
| 16. | Occupation certificate | Not obtained |
| 17. | Amount of assured return paid by the respondent to the complainant till September 2018 | Rs.85,71,132/- [Page 6 and 38 of reply] |

B. Facts of the complaint

4. The complainants have made the following submissions in the complaint:
- That after going through the advertisement published by the respondents in the newspapers and as per the broacher/prospectus provided by them, allottee Mr Yash Pal Kapur and Sanjog Kapur had



provisionally booked a Unit bearing No. 1744, 17th floor at Vatika Trade Centre which has now been shifted to Unit bearing No521 Floor, Block B Vatika Inxt City Centre, Sector 83 Gurugran, having tentative area of 1350 Sq. Ft. In the ratio of 65:35 and paid a sum of Rs. 54,00,000/- (Rs Fifty-Four Lakhs Only) to the respondents as a full and final payment and the respondents acknowledged the same vide builder buyer agreement dated 13.07.2010 and the acknowledgement receipts.

- b. That the builder had promised to pay an assured return as per the addendum dated 13/07/2010 attached with the BBA. Under this contract respondent were to pay to the allottees Rs.71.50 per square feet till the time flat is ready and completion certificate has been issued by competent authority to respondent and thereafter assured rental at Rs.65 per square feet in the event that the final rental is low or high respondent were supposed to share the additional cost refund to allottee as per para no. 32 (2) of annexure A. And the addendum attached with the BBA.
- c. That respondent had to pay commitment charges at Rs.71.50 per square feet to the allottee till he get the completion certificate from the appropriate authority but it seems in order to avoid to pay the said commitment charges respondent is hiding the fact regarding the issuance of completion certificate which might be not received by respondent till date and in such case of not receiving completion certificate respondent will be further liable to pay the difference amount of Rs.71.50 per square feet and Rs.65/- per square feet
- d. That since September 2018 respondent has stopped paying rental to allottee. That respondents have legal liability towards allottee to pay



a sum of Rs 39,57,525/- (thirty nine lakh fifty seven thousand five hundred fifty five only) as an arrear rent from the period of September 2018 to January 2022 and till the decision of this case with interest @ 18% per annum.

- e. That allottee has been requesting respondent since the month of September 2018 to clear dues as mentioned above towards the allottee but respondent did not give any clarification till date
- f. That allottee has sent various reminders to the respondent and finally a legal notice dated 08/12/21 through his counsel to the respondent, but respondent has neither paid any heed to his demand and nor ready to clear the balance amount till date.
- g. That the respondents bound, and the complainant is entitled to compensate and also entitled to interest on the amount from the respondents.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - a. Direct the respondent to pay assured return of ₹ 39,57,525/- with interest @18% per annum on the amount.
 - b. Litigation charges- ₹ 1,00,000/-.
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 contested the complaint on the following grounds:
 - a. That the complainant has got no locus standi or cause of action to file the present complaint. The present complaint is based on an



erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the builder buyers' agreement dated 13.07.2010.

- b. That at the very outset it is submitted that the present complaint is not maintainable or tenable in the eyes of law. The complainant has misdirected herself in filing the above captioned complaint before the Authority as the reliefs being claimed by the complainants cannot be said to fall within the realm of jurisdiction of this Ld. Authority. It is humbly submitted that upon the enactment of the Banning of Unregulated Deposit Schemes Act, 2019, (hereinafter referred as BUDS Act) the 'Assured Return' and/ or any "committed returns" on the deposit schemes have been banned. The respondent having not taken registration from SEBI Board cannot run, operate, continue an assured return scheme. The implications of enactment of BUDS Act read with the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014, resulted in making the assured return/committed return and similar schemes as unregulated schemes as being within the definition of "Deposit".
- c. That section 2(4) defines the term "Deposit" to include an amount of money received by way of an advance or loan or in any form, by any deposit taker and the Explanation to the section 2(4) further expands the definition of the "Deposit" in respect of company, to have same meaning as defined within the Companies Act, 2013. The Companies Act, 2013 in section 2 (31) defines "Deposit" as "deposit includes any receipt of money 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". The Legislature while defining the term "deposit" intentionally used the term prescribed so as to further clarify and connect the same to be read with rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014. Further the Explanation for the clause (c) of section 2(1) states that any amount: - received by the company, whether in the form of instalments or otherwise, from a person with promise or offer to give returns, in cash or in kind, on completion of the period specified in the promise or offer, or earlier, accounted for in any manner whatsoever, shall be treated as a deposit. Thus, the simultaneous reading of the BUDS Act read with the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014, resulted in making the assured return/committed return and similar schemes illegal.

- d. That Section 2(17) of the Banning of Unregulated Deposit Schemes Act, 2019 defines the "Unregulated Deposit Scheme" as 'means a Scheme or an arrangement under which deposits are accepted or solicited by any deposit taker by way of business and which is not a Regulated Deposit Scheme, as specified under column (3) of the First Schedule'. Thus, the 'Assured Return Scheme' proposed and floated by the respondent has become infructuous due to operation of law, thus the relief prayed for in the present complaint cannot survive due to operation of law. As a matter of fact, the respondent duly paid Rs. 85,71,132/- till September, 2018. The complainants have not come with clean hands before this Hon'ble Authority and has suppressed these material facts.
- e. That as per section 3 of the BUDS Act, all Unregulated Deposit Scheme have been strictly banned and deposit takers such as



builders, cannot, directly or indirectly promote, operate, issue any advertisements soliciting participation or enrolment in; or accept deposit. Thus, the section 3 of the BUDS Act, makes the assured return schemes, of the builders and promoter, illegal and punishable under law. Further as per the Securities Exchange Board of India Act, 1992 (hereinafter referred as SEBI Act) Collective Investment Schemes as defined under Section 11 AA can only be run and operated by a registered person/company. Hence, the assured return scheme of the respondent has become illegal by the operation of law and the respondent cannot be made to run a scheme which has become infructuous by law.

- f. That it is also relevant to mention here that the commercial unit of the complainant was not meant for physical possession as the said unit is only meant for leasing the said commercial space for earning rental income as is clear from the absence of clause of possession. Furthermore, as per the agreement, the said commercial space shall be deemed to be legally possessed by the complainants. Hence, the commercial space booked by the complainants is not meant for physical possession.
- g. That further in the matter of *Bharam Singh & Ors vs. Venetian LDF Projects LLP* (Complaint No. 175 of 2018) and *Jasjit Kaur Grewal vs. M/s MVL Ltd.* (Complaint No. 58 of 2018), the Hon'ble Real Estate Regulatory Authority, Gurugram has taken upheld its earlier decision of not entertaining any matter related to assured returns.
- h. That the complaint has been filed by the complainant just to harass the respondent and to gain the unjust enrichment. The actual reason for filing of the present complaint stems from the changed financial



valuation of the real estate sector, in the past few years and the allottee malicious intention to earn some easy buck. The COVID pandemic has given people to think beyond the basic legal way and to attempt to gain financially at the cost of others. For the fair adjudication of grievance as alleged by the complainants, detailed deliberation by leading the evidence and cross-examination is required, thus only the Civil Court has jurisdiction to deal with the cases requiring detailed evidence for proper and fair adjudication.

- i. That the complainants entered into an agreement i.e., BBA dated 13.07.2010 with respondent owing to the name, good will and reputation of the respondent company. That according to the terms of BBA dated 13.07.2010, the construction of unit was completed and the same was duly informed to the complainants vide letter dated 29.03.2016. That due to external circumstances which were not in control of the respondent, construction got deferred. That even though the respondent suffered from setback due to external circumstances, yet the respondent managed to complete the construction.
- j. That the present complaint has been filed on the basis of incorrect understanding of the object and reasons of enactment of the RERA, Act, 2016. The Legislature in its great wisdom, understanding the catalytic role played by the Real Estate Sector in fulfilling the needs and demands for housing and infrastructure in the country, and the absence of a regulatory body to provide professionalism and standardization to the said sector and to address all the concerns of both buyers and promoters in the real estate sector, drafted and notified the RERA Act, 2016 aiming to gain a healthy and orderly



growth of the industry. The Act has been enacted to balance the interests of consumer and promoter by imposing certain responsibilities on both. Thus, while section 11 to section 18 of the RERA Act, 2016 describes and prescribes the function and duties of the promoter/developer, section 19 provides the rights and duties of allottees. Hence, the RERA Act, 2016 was never intended to be biased legislation preferring the allottees, rather the intent was to ensure that both the allottee and the developer be kept at par and either of the party should not be made to suffer due to act and/or omission of part of the other.

- k. That in matter titled *Anoop Kumar Rath Vs M/S Sheth Infracore Pvt. Ltd.* in Appeal No. AT00600000010822 vide order dated 30.08.2019 the Maharashtra Appellate Tribunal while adjudicating points be considered while granting relief and the spirit and object behind the enactment of the RERA Act, 2016 in para 24 and para 25 discussed in detail the actual purpose of maintaining a fine balance between the rights and duties of the promoter as well as the allottee. The Ld. Appellate Tribunal vide the said judgment discussed the aim and object of RERA Act, 2016.
- l. That the complainant is attempting to seek an advantage of the slowdown in the real estate sector, and it is apparent from the facts of the present case that the main purpose of the present complaint is to harass the respondent by engaging and igniting frivolous issues with ulterior motives to pressurize the respondent. The complainants were sent the letter dated 29.03.2016 informing of completion of construction. Thus, the present complaint is without any basis and no cause of action has arisen till date in favour of the



complainants and against the respondent and hence, the complaint deserves to be dismissed.

- m. Thus, in this regard it is pertinent to mention that the Respondent Company was facing umpteen roadblocks in construction and development work in projects comprised in township 'Vatika India Next' beyond the control of the Respondent such as Construction, laying down and/ or re-routing of Chainsa-Gurgaon-Jhajjar-Hissar Gas Pipeline by Gas Authority of India Limited (Gail) for supplying natural gas and the consequent litigation for the same, due to which the Company was forced to change its building plans, project drawings, green areas, laying down of the connecting roads and complete lay-out of the Township, including that of Independent floors.
- n. Non acquisition of land by Haryana Urban Development Authority (HUDA) to lay down of Sector roads 75 mtr and 60 mtr wide and the consequent litigation for the same, the issue is even yet not settled completely.
- o. Labour issue, disruptions/delays in supply of stone aggregate and sand due to court orders of the Courts, unusually heavy rains, delay in supply of cement and steel, declaration of Gurgaon as 'Notified Area' for the purpose of Ground Water.
- p. Delay in removal/ re-routing of defunct High-Tension Line of 66KVA in Licenses Land, despite deposition of charges/ fee with HVBPNL, Haryana. Total and Partial Ban on Construction due to the directives issued by the National Green Tribunal during various times since 2015.



- q. The National Green Tribunal (NGT)/Environment Pollution Control Authority (EPCA) issued directives and measures (GRAP) to counter the deterioration in Air quality in Delhi-NCR region especially during the winter months over the last few years. Among various measures NGT, EPCA, HSPCB and Hon'ble Supreme Court imposed a complete ban on construction activities for a total of 70 days over various periods from November 2015 to December 2019.
- r. That, it is evident that the entire case of the complainants is nothing but a web of lies and the false and frivolous allegations made against the respondent are nothing but an afterthought, hence the complaint filed by the complainants deserves to be dismissed with heavy costs. It is further submitted that none of the relief as prayed for by the complainants is sustainable, in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and efforts of the authority. The complaint is an utter abuse of the process of law, and hence deserves to be dismissed.
7. Written submissions and additional documents filed by the respondent are taken on record and considered by the authority while deliberating upon the relief sought by the complainants.
8. 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 based on these undisputed documents and submission made by the complainants.
- E. Jurisdiction of the authority**
9. The respondent has raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. 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

10. 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

11. 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)(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.

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



F. Findings on the objections raised by the respondent

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

13. 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, 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;"

14. 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 Objection regarding delay due to force majeure circumstances

15. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as such as Construction, laying down and/ or re-routing of Chainsa-Gurgaon-Jhajjar-Hissar Gas Pipeline by Gas Authority of India Limited (Gail) for supplying natural gas and the consequent litigation for the same, due to which the Company was forced to change its building plans, project drawings, green areas, laying down of the connecting roads and complete lay-out of the Township, including that of Independent floors. Non acquisition of land by Haryana Urban Development Authority (HUDA) to lay down of Sector roads 75 mtr and 60 mtr wide and the consequent litigation for the same, the issue is even yet not settled completely. Labour issue, disruptions/delays in supply of stone aggregate and sand due to court orders of the Courts, unusually heavy rains, delay in supply of cement and steel, declaration of Gurgaon as 'Notified Area' for the purpose of Ground Water. Delay in removal/ re-routing of defunct High-Tension Line of 66KVA in Licenses Land, despite deposition of charges/ fee with HVBPNL, Haryana. Total and Partial Ban on Construction due to the directives issued by the National Green Tribunal during various times since 2015. The National Green Tribunal (NGT)/Environment Pollution Control Authority (EPCA) issued directives and measures (GRAP) to counter the deterioration in Air quality in Delhi-NCR region especially during the winter months over the last few years. Among various measures NGT, EPCA, HSPCB and Hon'ble Supreme Court imposed a complete ban on construction activities for a total of 70 days over various periods from November 2015 to December 2019.



16. Further, the authority has gone through the possession clause of the agreement and observed that as per clause 2 of the builder buyer agreement dated 13.07.2010, the respondent-developer proposes to handover the possession of the allotted unit within a period of three years from the date of execution of the agreement. In the present case, the due date is calculated comes out to 13.07.2013. The events such as Hon'ble Supreme Court of India to curb pollution in NCR, various orders passed by NGT, EPCA etc., were for a shorter duration of time and were not continuous being annual feature. Further, all the orders referred to by the respondent are after the lapse of the due date of possession as per the buyer's agreement and one cannot be allowed to take advantage of his own wrong.
17. Further in the judgement of the Hon'ble Supreme Court of India in the cases of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) 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. It was observed:

"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be



entitled for interest for the period of delay till handing over possession at the rate prescribed."

18. Accordingly, the respondent is obligated to deliver the possession of the unit within the time agreed between the parties regardless of unforeseen events or stay orders. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and plea taken by respondent is devoid of merits.

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

19. The respondent-promoter has raised an objection that the Hon'ble High Court of Punjab and 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 State of Haryana for taking coercive steps in criminal cases registered against the company for seeking recovery against deposits till the next date of hearing.
20. With respect to the aforesaid contention, the Authority place reliance on order dated 22.11.2023 in CWP No. 26740 of 2022 (supra), wherein the counsel for the respondent(s)/allottee(s) submits before the Hon'ble High Court of Punjab and Haryana, "that even after order 22.11.2022, the court's i.e., the Real Estate Regulatory Authority and Real Estate Appellate Tribunal are not proceeding with the pending appeals/revisions that have been preferred." And accordingly, vide order dated 22.11.2023, the Hon'ble High Court of Punjab and Haryana in CWP no. 26740 of 2022 clarified that there is no stay on adjudication on the pending civil appeals/petitions before the Real Estate Regulatory Authority and they are at liberty to proceed further in the ongoing matters that are pending



with them. The relevant para of order dated 22.11.2023 is reproduced herein below:

"... it is pointed out 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."

21. 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 complainant

G.I Assured return

22. The complainants are seeking unpaid assured returns on monthly basis as per the builder buyer agreement read with the addendum to the agreement at the rates mentioned therein. 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 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*) it was held by the authority that it has no jurisdiction to deal with cases of assured returns. Though in those cases, the issue of assured returns was involved to be paid by the builder to an allottee but at that time, neither the full facts were brought before the authority nor it was argued on behalf of the allottees that on the basis of contractual obligations, the builder is obligated to pay that amount. Thereafter, the authority after detailed hearing and consideration of material facts of the case in **CR/8001/2022**



titled as Gaurav Kaushik and anr. Vs. Vatika Ltd. rejected the objections raised by the respondent with respect to non-payment of assured return due to coming into the force of BUDS Act, 2019. The authority in the said matter very well deliberated that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon. So, it can be said that the agreement for assured returns between the promoter and an allottee arises out of the same relationship and is marked by the original agreement for sale. Therefore, it can be said that the authority has complete jurisdiction with respect to assured return cases as the contractual relationship arises out of the agreement for sale only and between the same contracting parties to agreement for sale. Also, the Act of 2016 has no provision for re-writing of contractual obligations between the parties as held by the Hon'ble Bombay High Court in case ***Neelkamal Realtors Suburban Private Limited and Anr. V/s Union of India & Ors., (supra)*** as quoted earlier. So, the respondent/builder can't take a plea that there was no contractual obligation to pay the amount of assured returns to the allottee after the Act of 2016 came into force or that a new agreement is being executed with regard to that fact. When there is an obligation of the promoter against an allottee to pay the amount of assured returns, then he can't wriggle out from that situation by taking a plea of the enforcement of Act of 2016, BUDS Act 2019 or any other law. 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. Further, section 2(4)(I) deals with the exception wherein 2(4)(I)(ii) specifically mention that *deposit does not include an 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.* In the present matter 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 as agreed between the allottee and the builder in terms of buyer's agreement, MoU or addendum executed inter-se parties. Moreover, the developer is also bound by promissory estoppel. As per this doctrine, the view is that if any person has made a promise and the promisee has acted on such promise and altered his position, then the person/promisor is bound to comply with his or her promise. 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. The Act of 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)(ii) 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.

23. The builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover,



an agreement 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 original agreement for sale.

24. 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 2016 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. In view of the above, the respondent is liable to pay assured return to the complainants-allottees in terms of the builder buyer agreement read with addendum to the said agreement.
25. On consideration of documents available on record and submissions made by the complainant and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The agreement executed between the parties on 13.07.2010, the construction of the subject unit was to be completed within a period of 3 years, from date of execution of agreement dated 13.07.2010, therefore, the due date of possession comes out to be i.e., 13.07.2013. The assured return is payable to the allottees on account of provisions in the addendum to the buyer's agreement dated 13.07.2010. The assured return in this case is payable as per "Annexure A - Addendum to the agreement" the promoter had agreed to pay to the complainants allottee Rs.71.50/- per sq. ft. on



monthly basis till completion of the building and Rs.65/- per sq. ft. on monthly basis after the completion of the building. The said clause further provides that it is the obligation of the respondent promoter to pay the assured returns. It is matter of record that the amount of assured return was paid by the respondent promoter till September 2018 but later on, the respondent refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019.

26. In the present complaint, the respondent has contended in its reply that the respondent has intimated the complainants that the construction of Block F is complete wherein the subject unit is located vide letter dated 29.03.2016. However, admittedly, OC/CC for that block has not been received by the promoter till this date. The authority is of the view that the construction cannot be deemed to complete until the OC/CC is obtained from the concerned authority by the respondent promoter for the said project. Admittedly, the respondent has paid an amount of Rs.85,71,132/- to the complainants as assured return till September 2018. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return at the agreed rate i.e., @ **Rs. 71.50/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., September 2018 till the date of completion of the building and thereafter, Rs. 65/- per sq. ft. per month after the completion of the building till the date the said unit is put on lease.**
27. Accordingly, 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 @ 9.10% p.a. till the date of actual realization.

G.II. Direct the respondent to pay ₹ 1,00,000/- as litigation cost.

28. The complainants are seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants may approach the adjudicating officer.
29. In the present case, the authority (Shri. Arun Kumar, Hon'ble Chairperson, Shri. Vijay Kumar Goyal, Member & Shri. Sanjeev Kumar Arora, Member) heard the complaint and reserved the order on 30.04.2024, the same was fixed for pronouncement of order on 06.08.2024. However, the said order was not pronounced on 06.08.2024 and was further adjourned for orders on 24.09.2024. On 16.08.2024, one of the member Shri. Sanjeev Kumar Arora got retired and has been discharged from his duties from the Authority. Hence, rest of the presiding officers of the Authority have pronounced the said order.

H. Directions of the authority

30. 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) of the Act:

- a. The respondent is directed to pay the amount of assured return at the agreed rate i.e., **@ Rs. 71.50/- per sq. ft. per month** from the date the payment of assured return has not been paid i.e., **September 2018 till the date of completion of the building and thereafter, Rs. 65/- per sq. ft. per month after the completion of the building till the date the said unit is put on lease.**
- b. 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 @ 9.10% p.a. till the date of actual realization.
- c. The respondent shall not charge anything from the complainants which is not the part of the builder buyer agreement.

31. Complaint stands disposed of.

32. File be consigned to the registry.

HARERA
GURUGRAM

V. J. - 3
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 24.09.2024

Arun Kumar

(Arun Kumar)

Chairperson