

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

Complaint no.: 876 of 2023
Date of complaint: 15.03.2023
Order pronounced on: 05.09.2024

Sunil Chhabra

R/o: - D 4/20, DLF Phase 1, Gurugram-122001.

Complainant

Versus

VS Realprojects Pvt. Ltd.

Regd. Office at: - Ground Floor, Plot no.15, Sector-44,
Gurugram-122002.

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Kanish Bangia (Advocate)

Shri Ishan Dang (Advocate)

Complainant

Respondent

ORDER

1. This complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

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:

Sr. No.	Particulars	Details						
1.	Name of the project	"AMB Selfie Square", Sector 37D, Gurugram						
2.	Project area	3.775 acres						
3.	Nature of project	Commercial Complex						
4.	DTCP license	14 of 2014 dated 10.06.2014 Valid upto 09.06.2019						
5.	License	M/s VS Real Projects Private Limited						
6.	RERA Registration	Registered Vide no. 57 of 2017 dated 17.08.2017 Valid upto 16.08.2022						
7.	Unit no.	506, 5 th Floor (page no. 49 of reply)						
8.	Unit admeasuring (super area)	709 sq. ft. (page no. 49 of reply)						
9.	Application Form	03.03.2017 (page no. 40 of reply)						
10.	Allotment Letter	09.03.2017 (page no. 49 of reply)						
11.	Memorandum of Understanding	09.03.2017 (page no. 47 of compliant)						
12.	Assured return clause	2.1 <i>The Developer, agrees and undertakes to pay to the allottee assured return as under:</i> <table border="1" data-bbox="842 1818 1463 2054"> <thead> <tr> <th>Amount of monthly assured return</th> <th>Payable from</th> <th>Payable Till</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td></td> </tr> </tbody> </table>	Amount of monthly assured return	Payable from	Payable Till			
Amount of monthly assured return	Payable from	Payable Till						

		42,540/-	07-03-2017	Till issuance of letter of offer of possession.
		35,450/-	From the date of realization of full and final payment as per payment plan after issuance of letter of offer of possession.	Till 36 months from issuance of letter of offer of possession or 1 st lease, whichever is earlier.
13.	Date of execution of builder buyer agreement	30.05.2017 (page 65 of complaint)		
14.	Endorsement (being brother and successor on death of the Original Allottee)	05.03.2021 (page 95 of complaint)		
15.	Possession clause	16. Possession of the Unit. <i>"16.1 The company, based upon its present plans and estimates, and subject to all exceptions, proposes to handover possession of the unit within Thirty-Six (36) months computed from the date of execution of buyer's agreement, excluding additional grace period of twelve (12) months, subject to force majeure circumstances and reasons beyond the control of the company..."</i> (Empasis Supplied)		
16.	Due date of delivery of possession	30.11.2020 30.05.2020 + Grace period of 6 months allowed as per HARERA notification no. 9/3-2020 dated 26.05.2020 (Note: The due date is calculated from the date of execution of BBA).		
17.	Sale Consideration	Rs.37,62,580/- (page no. 72 of complaint)		



18.	Amount Paid by allottee	Rs.39,14,732/- (as per the receipts attached with the complaint)
19.	Occupation certificate	Not obtained
20.	Offer of possession	Not offered
21.	Assured return paid amount	Rs.13,10,506/- till 01.10.2019 (page 84 of reply)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
- That the complainant being the allottee of the unit of 709 sq. ft. in the "AMB Selfie Square" project of the respondent situated in situated at sector- 37D, Dwarka Expressway, Gurgaon is covered within the definition of "allottee" under Section 2 (d) of The Real Estate (Regulation and Development) Act, 2016.
 - That the respondent is a limited company incorporated under the Companies Act, 1956 and is inter alia engaged in the business of providing real estate services.
 - The respondent announced the launch of their project by the name of "AMB Selfie Square", and thereby, invited applications from prospective buyers for the purchase of units in the said project. The complainant being lured by the sales representatives of the respondent to buy a unit in their project, booked a unit in the said project and made the complete payment in one time.
 - That relying on the various representations and assurances, the original allottee, booked a unit in the project "AMB Selfie Square" of the respondent and filled an application form dated 03.03.2017 along with a booking

amount of Rs.64,632/-, Rs.3,64,520/-, Rs.34,87,580/-, i.e., a total amount of Rs.39,14,732/-.

- e. That the original allottee received a welcome letter dated 05.03.2017 and a provisional allotment letter confirming the booking of the unit no. 506, 5th floor, admeasuring super area of 709 sq. ft. in the project "AMB Selfie Square" at 37D, Dwarka Expressway, Gurgaon with a total sale consideration of Rs.37,62,580/- for a down payment plan.
- f. That the original allottee, on 09.03.2017 was provided with the booking amount receipts of Rs.64,632/-, Rs.3,64,520/-, Rs.34,87,580/-, i.e., a total amount of Rs.39,14,732/-. That even after receiving the complete consideration of Rs.39,14,732/- as the booking amount, the respondent issued a memorandum of understanding to the original allottee on 09.03.2017.
- g. Thereafter, the respondent issued the agreement (memorandum of understanding) dated 09.03.2017 and allotted a space of 709 sq. ft. to the original allottee.
- h. That as per clause 2.1 of the memorandum of understanding dated 09.03.2017 the respondent was liable to pay assured return of Rs.42,540/- from 07.03.2017 till the issuance of letter of the offer of possession and Rs.35,450/- after the issuance of letter of offer of possession till 36 months from the issuance of the offer of possession or 1st Lease, whichever is earlier.
- i. That the respondent entered into a builder buyer agreement with the original allottee on 30.05.2017 for unit no. 506, 5th floor admeasuring super area of 709 sq. ft. That the respondent took more than 100% of the total sale consideration prior to the commencement of the builder buyer agreement which is the clear violation of section 13(1) of Act, 2016. Hitherto, as per clause 16.1 of the agreement, the respondent was bound to hand over the

- possession of the said unit within 36 months from the date of execution of buyer's agreement, excluding additional grace period of 12 months.
- j. That as per the MOU, the respondent was directed the pay assured returns to the original allottee from 07.03.2017 but the original allottee has received the returns from 01.05.2017 to 01.04.2018.
 - k. Thereafter on 22.02.2019 the original allottee left for her heavenly abode.
 - l. That the successor of her property Mr. Sunil Chhabra (brother of late Smt. Kanchan Sarvaria) sent request letter to the respondent in order to change the name on the records and clearing dues of the assured monthly returns in his name along with the court order/letter of administration considering Sunil Chhabra as the legal heir of Ms. Kanchan Sarvaria via succession petition no. 49/2019 titled as "SUNIL CHHABRA VS GENERAL PUBLIC & ORS".
 - m. That the complainant also gave an indemnity bond in favour of the respondent and an affidavit of legal heir.
 - n. That, the complainant filed an application form dated 06.01.2021 for unit no. 506, 5th floor admeasuring super area of 709 sq. ft. along with the acknowledgment of relinquishment/transfer/assignment of rights & interest in favour of Sunil Chhabra and consent for lease.
 - o. That the unit, on 05.03.2021 was endorsed in the favour of the complainant, Sunil Chhabra. Therefore, after getting endorsed the said unit on his name, the complainant made several requests for clearing the pending assured returns and to offer the possession and getting the assured rental as per clause 2.1 of the memorandum of understanding. The respondent kept on making false assurances to the complainant.
 - p. That after losing all hope from the respondent company in terms of getting the assured return of more than 6 years from 07.03.2017, and having

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shattered the dreams of a proper and timely return on investment in the form of assured returns, and also losing considerable amount of money the complainant is constrained to approach this Hon'ble Authority for delay on due amount of assured returns.

- q. That the respondent deliberately and with a mischievous intent tricked the investors including the complainants through false promises and forced into paying up huge amounts to the respondent. The said dishonest intent of the respondent is amply evident from their entire conduct and omissions on part of the respondent set out hereinafter: -
- (i) Failure to reply to the complainant's concerns and to act in an absolutely high-handed manner.
 - (ii) Deliberately committing absolute breach of the promises and projections at the time of booking.
 - (iii) Complete failure to keep the promised schedule of completion and delay without any valid reason whatsoever.
 - (iv) Complete failure in giving assured returns to the complainant.
- r. That the respondent is well aware that the projects is over delayed and hence are liable to pay interest as per the provisions of the RERA 2016 and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017. According to Sections 18(1) and 19(7) of RERA 2016 read with Rule 15, the respondent is liable to pay the allottee interest for delaying the possession in violation of the terms of the Agreement.
- s. The inordinate delay on part of the respondent in delivering the possession amounts to deficiency in the services offered by the respondent. That as per Section 18 and 19 of the Act, the respondent is liable to pay interest to the allottees of an apartment, building or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale.

The complainant is therefore entitled for interest for the delayed period till the actual proper handover of the unit.

- t. That the respondent under clause 4 of the builder buyer agreement agreed to pay an amount of Rs.60/- per sq. Ft. after the completion of the building. However, the respondent has failed to make these payments on timely basis and on a myriad occasion citing frivolous reasons has simply not paid the complainant, especially after 2016. Under the guidelines of the Honorable Haryana Real Estate Regulatory Authority in the matter of **Complaint No: 1400 of 2019 Pankaj Jain Huf v. VSR Infratech Pvt Ltd.** held that in cases where there is an agreement between the complainant and the respondent for payment of assured returns it is the obligation of the builder must honor the terms of the agreement. Therefore, the company is liable to compensate the complainant for the amount of assured returns due till date.
- u. It is submitted that this Hon'ble Authority in **Suresh Singh Chhikara v. M/s/ Vatika Ltd. Complaint no. 3942/2020** and **Madhushree Khaitan v. M/s/ Vatika Limited, Complaint no. 1239/2021** while placing reliance on **Anil Mahindroo & Anr. V/s Earth Iconic Infrastructure Pvt. Ltd.** (Company Appeal (AT) (Insolvency) No. 74 of 2017) and **Nikhil Mehta and Sons (HUF) and Ors. vs. AMR Infrastructure Ltd.** (CA NO. 811 (PB)/2018 in (IB)-02(PB)/2017) and others held that the issue of assured returns is on the basis of contractual obligations arising between the parties and held that the allottees are investors having chosen committed return plans. Therefore, where the builder agreed to pay monthly committed return to the investors, it would be liable to do so. Further, that the respondent in such situations would be bound by promissory estoppel.
- v. That the cause of action accrued in favour of the complainant and against the respondent on the date when the respondent advertised the said

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project, it also arose when the respondent inordinately and unjustifiably and with no proper and reasonable legal explanation or recourse delayed the project beyond any reasonable measure continuing to this day, it continues to arise as the complainant has not been given possession of their unit and have not been paid the amount of interest for delayed possession of the unit in the project till date and the cause of action is still continuing and subsisting on day to day basis.

- w. That the complainant is entitled to get compensation for the said deficiency in service. The complainant is also entitled for any other relief which they are found entitled by this Hon'ble Authority.
- x. That the complainant has not filed any other complaint before any other forum against the erring respondent and no other case is pending in any other court of law.
- y. That the cause of action accrued in favour of the complainants who booked his commercial unit based on the representations of the respondent. Since the assured return dues has not been given to the complainants till date, the cause of action is still continuing.

C. Relief sought by the complainant: -

- 4. The complainant has sought following relief(s):
 - i. Direct the respondent to pay the amount of assured return from 07.03.2017 till 1st lease.
 - ii. Direct the respondent to pay the interest on the total amount paid by the complainant at the prescribed rate of interest as per RERA Act as the respondent failed to provide the prescribed assured return to the complainant.
 - iii. Direct the respondent to pay the interest on due amounts towards assured return.

- iv. Direct the respondent to not execute any agreement of sale or conveyance deed/sale deed with any third party in respect of the plot allotted to the complainant.
 - v. Direct the respondent not to charge anything which is not the part of the payment plan and as agreed upon.
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 present complaint is not maintainable in law or on facts. That the complainant does not have the locus standi or cause of action to file the present complaint.
 - b. That the complainant is not an "aggrieved party" or "allottee" as defined under the Act. The complainant is an investor who had purchased the unit in question as a speculative investment.
 - c. That the complainant has misinterpreted and misconstrued the provisions of the Real Estate (Regulation and Development) Act, 2016, hereinafter referred to as RERA and the Rules and Regulations made thereunder as well as the terms and conditions of agreement and allotment between the parties.
 - d. That the present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint can only be adjudicated by the civil court. The present complaint deserves to be dismissed on this ground alone.

- e. That the complainant is estopped by his own acts, conduct, acquiescence, laches, omissions etc. from filing the present petition. Furthermore, the complainant has not disclosed the real and true facts of the case, which are detailed in the succeeding paras of the present reply.
- f. That the respondent had submitted an application for grant of license to Directorate of Town and Country Planning Department, Haryana, Chandigarh for development of a commercial colony over land admeasuring 30 kanal 4 Marla (3.775 Acres approximately) situated in Sector- 37D in revenue estate of village Harsaru, Gurugram. Subsequently, License bearing no. 14 dated 10.06.2014 had been issued by Directorate of Town and Country Planning, Haryana, Chandigarh.
- g. That building plans for the project in question had been duly approved/sanctioned by Directorate of Town and Country Planning, Haryana, Chandigarh vide memo bearing no. ZP-976/AD(RA)/2014/15562 dated 16.07.2014. Thereafter, the respondent commenced construction/development of a commercial colony under the name and style of "AMB Selfie Square" (hereinafter referred to as "said project") on the land in question.
- h. That the original allottee, Ms Kanchan Sarvaria, had approached the respondent and evinced an interest in purchasing a unit in the said project. It is pertinent to mention that after being fully satisfied with regard to all aspects of the project, including but not limited to the capacity/capability of the respondent to undertake conceptualization, promotion, development and construction of the same, the original allottee took an independent and informed decision to purchase a unit in the said project.
- i. That application form dated 03.03.2017 was submitted by the original allottee after duly accepting the terms and conditions thereof. The original

- allottee had been provisionally allotted unit bearing no.506 admeasuring 709 square feet (super area) approx. located on the 5th floor of the said project. The original allottee had opted for a down payment plan in terms of which 10% of the sale consideration was payable upon booking, 90% within 30 days of booking along with 100% EDC & IDC and 100% stamp duty, registration charges, IFMS, Sinking Fund and all other charges payable in terms of the buyer's agreement.
- j. That the original allottee and the respondent had executed a memorandum of understanding dated 09.03.2017 pertaining, inter alia, to payment of assured returns in terms of the payment plan opted by the original allottee. The respondent duly paid assured return to the original allottee in terms of the MoU referred to above.
- k. That subsequently, due to the prevalence of Covid-19 pandemic and the unforeseen delays and complications on account thereof including but not limited to delays in construction of the project, the same constituted a force majeure condition on account of which the respondent became unable to proceed with payment of assured returns as agreed in the said MoU. Accordingly, emails dated 23.04.2020 and 20.05.2020 were sent to the original allottee informing her about the same.
- l. That by email dated 08.06.2020, the respondent had proposed to adjust assured return amount against future dues and also offered additional benefit of 6% interest on assured return payable to the original allottee. That at that time, the respondent was not aware that the original allottee had expired.
- m. That it was in the month of December, 2020 that the complainant informed that the respondent that the original allottee had expired on 22.02.2019. The respondent informed the complainant about the documents and formalities



required for substituting the name of the complainant as the legal heir of the original allottee. The documents were provided by the complainant in the month of January, 2021 and thereafter the name of the complainant has been recorded as the allottee of the unit in question in the place of the original allottee.

- n. That the complainant was called upon to execute and get registered the buyer's agreement in the name of the complainant and also to get a memorandum of understanding pertaining to payment of assured returns in his favour so as to reflect the agreement arrived at between the complainant and the respondent whereby it was decided that assured returns for the period from October 2019 to March 2020 and from October 2020 to February 2021 shall be paid to the complainant, assured return for the period from April 2020 to September 2020 shall not be payable due to force majeure circumstances on account of prevalence of Covid-19 pandemic and that assured returns from March 2021 till offer of possession shall be accumulated and adjusted against future dues.
- o. That by letter dated 17.02.2022, the complainant was reminded to come forward for registration of the buyer's agreement. However, the complainant has not come forward for executing the buyer's agreement as well as the memorandum of understanding in terms of the agreement between the parties. Instead, the complainant has proceeded to file the present false and frivolous complaint while concealing the aforesaid facts from the Hon'ble Authority.
- p. That the respondent has registered the said project under the provisions of the Act and the period of registration was initially granted up till 16.08.2022. The respondent has applied to the Hon'ble Authority for renewal of registration. In other words, the respondent is committed to completion of

the project and delivering the project subject to force majeure conditions and timely payment of instalments and compliance of the terms and conditions of the agreement between the complainant and the respondent. The institution of the present complaint is highly premature and misconceived and the same is liable to be dismissed at the very threshold.

- q. That moreover, this Honorable Authority had published circular dated 27.03.2020 wherein it had been duly mentioned that the completion date of the projects registered with this Honorable Authority had been extended till 30.06.2020. Thereafter, this Honorable Authority had published order bearing no. 9/3-2020 HARERA/GGM(Admn) dated 26.05.2020 wherein it had been duly mentioned that the completion date of the projects registered with this Honorable Authority would automatically stand extended by a period of 6 months on account of outbreak of Covid-19. Furthermore, it had also been stipulated in the aforesaid order that the outbreak of coronavirus pandemic would be considered a force majeure event and the developers would not need to file any application regarding invocation of force majeure clause.
- r. That the complainant was called upon to come forward for execution and registration of the buyer's agreement as far back as in March, 2021. Since the complainant refrained from executing the buyer's agreement, reminder dated 17.02.2022 was issued by the respondent. However, the complainant has willfully refrained from executing the buyer's agreement for reasons best known to himself. That clause 16 of the terms and conditions forming part of the application form executed by the complainant provides that the respondent shall endeavor to give possession of the unit within 36 months computed from the date of execution of the unit/space buyer's agreement, excluding additional grace period of 12 months, subject to force majeure

circumstances and reasons beyond the power and control of the respondent and subject to timely payment of instalments by the allottee.

- s. That the complainant being in default, cannot take advantage of his own wrongdoing and delay and cannot be permitted to cast needless aspersions upon the respondent. The complainant does not have any just or legitimate grievance qua the respondent. It is wrong and denied that the institution of the present false and baseless complaint is warranted under the facts and circumstances of the case.
 - t. Therefore, it is obvious from the entire sequence of events that no illegality can be attributed to the respondent. Thus, the allegations levelled by the complainant qua the respondent are totally baseless and do not merit any consideration by the Honorable Authority. The present complaint is nothing but an abuse of the process of law. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.
7. All other averments made in the complaint were denied in toto.
 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 on the basis of these undisputed documents and written submissions made by the parties.

E. Written submission made by respondent.

9. The respondent has filed the written submission on 14.08.2024 and the same are taken on record. No additional facts apart from the reply has been stated in the written submission.

F. Jurisdiction of the authority

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

F.I Territorial jurisdiction

11. 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.

F.II Subject-matter jurisdiction

12. 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.

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

G. Findings on the objections raised by the respondent:

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

14. 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 complainants are 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;"

15. 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 complainants, it is crystal clear that the complainants 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.

H. Findings on the relief sought by the complainant.

- H.I. Direct the respondent to pay the amount of assured return from 07.03.2017 till 1st lease.
- H.II. Direct the respondent to pay the interest on the total amount paid by the complainant at the prescribed rate of interest as per RERA Act as the respondent failed to provide the prescribed assured return to the complainant.

H.III. Direct the respondent to pay the interest on due amounts towards assured return.

H.IV. Direct the respondent to not execute any agreement of sale or conveyance deed/sale deed with any third party in respect of the plot allotted to the complainant.

H.V. Direct the respondent not to charge anything which is not the part of the payment plan and as agreed upon.

16. On the above-mentioned reliefs sought by the complainant, are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

Assured return

17. The complainant is seeking unpaid assured returns on monthly basis as per memorandum of understanding dated 09.03.2017 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 till 01.09.2019 but later on, the respondent has stopped the payment of assured return by invoking clause 5.1 of MoU dated 09.03.2017 due to Covid-19 pandemic. However, till date no payment of assured return was paid by the respondent after 01.09.2019 also not even after the pandemic situation was discontinued.
18. 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.
19. 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.

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 2016 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 later from the former against the immovable property to be transferred to the allottee later on. That this Authority has also deliberated the issue of assured return in number of case including *Prateek Srivastava & Namita Mehta VS M/s Vatika Limited (RERA-GRG-660-2021)* as well as cases numbered as 518 of 2021, 622 of 2021 and 633 of 2021, and similar view has been taken in present case.

Delay possession charge.

21. In the present complaint, the complainant intends to continue with the project and is seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which reads as under:

“Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.”

22. A builder buyer agreement dated 30.05.2017 was executed between the parties. The due date to handover the possession of unit is calculated as per clause 16 of BBA. The relevant clause is reproduced below:

“16.1 The company, based upon its present plans and estimates, and subject to all exceptions, proposes to handover possession of the unit within Thirty-Six (36) months computed from the date of execution of buyer’s agreement, excluding additional grace period of twelve (12) months, subject to force majeure circumstances and reasons beyond the control of the company...”

23. By virtue of buyer’s agreement executed between the parties on 30.05.2017, the possession of the booked unit was to be delivered within 36 months from the date of execution of buyer’s agreement, which comes out to be 30.05.2020. Further, vide HARERA notification no.9/3-2020 dated 26.05.2020, the extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 30.05.2020 i.e., after 25.03.2020. Thus, an extension of 6 months is to be given over and above the due date of handing over of possession in view of notification no.9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreaks of Covid-19 pandemic. Therefore, the due date of handing over of possession come out to 30.11.2020. As far as grace period of 12 months as per buyer’s agreement is concerned, the respondent has only taken a plea of covid-19 and claiming extension of 12 months for the same. However, the Authority vide notification no.9/3-2020 dated 26.05.2020 already granted 6 months of grace period on account of Covid-19 pandemics and thus, no period over and above grace period of 6 months on account of Covid-19 pandemics can be given to the respondent/promoter.

24. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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“Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the “interest at the rate prescribed” shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.”

25. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 05.09.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
26. On consideration of documents available on record and submissions made by the complainants and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The buyer's agreement executed between the respondent and original allottee (Ms. Kanchan Sarvaria) on 30.05.2017 and the same is endorsed on 05.03.2021 in favour of Sunil Chhabra (i.e., complainant), the possession of the subject unit was to be delivered within stipulated time i.e., 30.11.2020 including grace period of 6 months for Covid-19.
27. 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?
28. 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 memorandum of understanding. The assured return in this case is payable as per “clause 2.1 of memorandum of understanding”. The rate at which

assured return has been committed by the promoter is Rs.42,540/- per month payable from 07.03.2017 till issuance of letter of offer of possession 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 a Rs.42,540/- per month whereas the delayed possession charges are payable approximately Rs.36,211/- per month. By way of assured return, the promoter has assured the allottee that he would be entitled for this specific amount till issuance of offer of possession. Moreover, the interest of the allottees is protected even after the issuance of offer of possession as the assured returns are payable till 36 months from issuance of offer of possession or till the date of said unit 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.

29. 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 completion of the project, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.
30. On consideration of the documents available on the record and submissions made by the parties, the complainant has sought the amount of unpaid

amount of assured return as per the terms of memorandum of understanding executed thereto along with interest on such unpaid assured return. As per clause 2.1 of MoU dated 09.03.2017, the promoter had agreed to pay to the complainant-allottee Rs.42,540/- on monthly basis till issuance of offer of possession and Rs.35,450/- per sq. ft. on monthly basis from the date of realization of full and final payment as per payment plan after issuance of letter of offer of possession till 36 months from issuance of offer of possession or 1st lease, whichever is earlier. The said clause further provides that it is the obligation of the respondent promoter to lease the premises. It is matter of record that the amount of assured return was paid by the respondent promoter till September 2019. However, it is agreed between the parties that as per clause 5.1 of MoU, in event of force majeure conditions respondent shall have the right to stop the payment of assured return till discontinuation of such force majeure conditions. The relevant para is reproduced herein below:

5.1 Force Majeure: In the event of force majeure conditions, the payment of assured return shall remain suspended for such period and payment of same shall resume upon discontinuation of such force majeure conditions...

Moreover, vide HARERA Notification no.9/3-2020 dated 26.05.2020, the Authority has extended the period of six months due to outbreak of Covid-19. Thus, the Authority is of the view, as per the agreed terms of MoU and as per the HARERA Notification no.9/3-2020 dated 26.05.2020, the respondent shall not be held liable to pay the assured return for the period of six months due to outbreak of Covid-19.

31. In the present complaint, neither the OC/CC for that project has not been received by the promoter till this date and nor the letter for offer of possession was issued to the complainant-allottee. 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.42,540/- per month from the date the payment of assured return has not been paid i.e., **September 2019 till issuance of letter of offer of possession and thereafter, Rs.35,450/- per sq. ft. per month form the date of realization of full and final payment as per payment plan after issuance of letter of offer of possession till 36 months from issuance of offer of possession or 1st lease, whichever is earlier.**

32. The respondent in terms of MoU dated 09.03.2017 invoked the clause 5.1 (force majeure) wherein the respondent shall suspend the payment of assured return till discontinuation of such force majeure condition. The Authority as per notification no. 9/3-2020 dated 26.05.2020 has already allowed the grace period of 6 months from 25.03.2020 to 25.09.2020. Therefore, there is no reason why this benefit cannot be allowed to the complainant-allottee who is duly affected during such adverse eventualities and hence a relief of 6 months will be given equally to both the complainant/allottee and respondent/ promoter and no interest shall be charged by either party, during the Covid period i.e., from 25.03.2020 to 25.09.2020.
33. 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 complainant and failing which that amount would be payable with interest @ 9.10% p.a. till the date of actual realization.
34. Further, during the proceedings dated 05.09.2024 and in reply the counsel for respondent request for direction to the complainant-allottee to execute the buyer's agreement with respondent-developer. However, as per records a buyer's agreement was already executed on 30.05.2017 with the original

allottee (Ms. Kanchan Sarvaria) and the same is endorsed on 05.03.2021 in favour of Sunil Chhabra (i.e., complainant) being only successor of the original allottee via *Succession Petition No.49 of 2019* titled as "*Sunil Chhabra VS General Public and other's*". Thus, in view of the above, no specific direction for the same can be issued.

35. Moreover, on consideration of documents available on records and submission made by both the parties, it is observed that neither the third party rights has been created against the allotted unit nor any cancellation has been issued by the respondent. Thus, in view of the above, no specific directions to the respondent relief (*H.IV. Direct the respondent to not execute any agreement of sale or conveyance deed/sale deed with any third party in respect of the plot allotted to the complainant*) can be issued.

I. 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 the respondent is directed to pay the amount of assured return at the agreed rate i.e., @ Rs.42,540/- per month from the date the payment of assured return has not been paid i.e., September 2019 till issuance of letter of offer of possession and thereafter, Rs.35,450/- per sq. ft. per month from the date of realization of full and final payment as per payment plan after issuance of letter of offer of possession till 36 months from issuance of offer of possession or 1st lease, whichever is earlier.

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 @9.10% p.a. till the date of actual realization.

- iii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e. 9.10% p.a. by the respondent which is the same rate of interest which the builder shall be liable to pay the allottees, in case of default of making payment as per section 2(za) of the Act.
- iv. The benefit of six months grace period on account of Covid-19 shall be applicable to both the parties in the manner details herein above and no interest or assured return to be charged for the period 25.03.2020 to 25.09.2020 from the complainant or to be paid by the respondent on account of delay for the above said covid period.
- v. The respondent is directed to get the conveyance deed of the allotted unit executed in the favour of complainant in term of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.
- vi. The respondent shall not charge anything from the complainant which is not the part of the builder buyer agreement.

37. Complaint stands disposed of.

38. File be consigned to registry.

Dated: 05.09.2024

v.l 
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram