



| PROCEEDINGS OF THE DAY | | 30-31 |
|---|---|-------|
| Day and Date | Tuesday and 13.08.2024 | |
| Complaint No. | CR/5082/2021 Case titled as Vishal Narula V/s Splendor Buildwell Pvt. Ltd. and Splendor Landbase Limited CR/5112/2021 Case titled as kamal Narula V/s Splendor Buildwell Pvt. Ltd. and Splendor Landbase Limited | |
| Complainants | Vishal Narula and Kamal Narula | |
| Represented through | Shri Gaurav Rawat advocate | |
| Respondent | Splendor Buildwell Pvt. Ltd. and Splendor Landbase Limited | |
| Represented through | Ms. Shriya Takkar and Ms. Smriti Srivastava Advocates | |
| Last date of hearing | Rectification | |
| Proceeding Recorded by | Naresh Kumari and HR Mehta | |
| Order | | |
| <p>This order shall dispose of two applications, MA NO. 275/2024 and 276/2024 dated 07.05.2024 filed u/s 39 of the Act of 2016 by the respondent.</p> <p>The said complaints were disposed of vide order dated 09.08.2023 wherein the Authority passed the following directions in Paragraph No.67 of the said order as under:</p> <ul style="list-style-type: none"><i>The respondent is directed to pay the arrears of amount of assured return amount from October, 2018 till September, 2019 as per Clause 5 of the MoU. Further, the respondent/ builder would also be liable to pay monthly assured returns at agreed rate of the super area till the said unit is leased out to the prospective lessee(s).</i><i>The arrears of such interest accrued from due date of possession till its admissibility as per direction (1) above shall be paid by the promoters to the allottee within a period of 90 days from date of this order as per rule 16(2) of the rules.</i> | | |



- *The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period against his unit to be paid by the respondents.*
- *The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.75% by the respondent/promoters which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.*
- *The respondents are directed not to charge anything which is not part of buyer's agreement.*

The respondent filed a rectification application being MA No. 406/2023 on 25.10.2023 for rectification of order dated 09.08.2023 and the aforementioned rectification application filed by the respondent therein was decided by the Authority vide order dated 27.02.2024, with **the following rectifications:**

"2. Assured return shall be allowed from January 2019 till September 2019. The above rectification is allowed being an error apparent from the facts on record.

3. It is observed that there is inadvertent error where MoU is inadvertently mentioned as Buyer agreement. Therefore, buyer's agreement may be read as MoU.

4. It is observed that this para needs to be deleted as it is inadvertently written and not relevant to the above complaint.

5. It is observed that the said para is inadvertently written as it is a case of assured return. Hence para 67 (dot 4) may be read as " the respondent is directed to pay outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of order after adjustment of outstanding dues, if any, failing which that amount would be payable with interest @ 8.70% p.a till the date of actual realization". The authority observes that the said error is inadvertent in nature and hence, the said rectification is allowed."

Now, the respondent builder has filed another application dated 07.05.2024 for rectification of the order, stating that this Hon'ble Authority failed to rectify the error with respect to assured return and assured rental being allowed without taking into consideration Clause 39 of the MOU which restricts the maximum liability of the Applicant Developer. That the Authority at S.NO. 1 of order dated 27.02.2024 has observed as follows:

"1. After consideration of the facts and circumstances, the Authority is of the view that clause 5 of the MOU is unconditional and complete in itself. Clause 5 cannot be read with Clause 39 of the MoU as Clause 39 is ambiguous and conditional on clause 26(a). It even restricts the statutory rights of the allottee pertaining to refund/interest/damages etc which makes it evident that the same has been inserted by the promoter being in a dominant position. Further, Clause 26 pertains to an option of buying back the subject unit at a prescribed rate in case of cancellation. In the present case, the cancellation has been set aside. Moreover, the promoter has already paid an amount of Rs.92,05,161/- to the Complainant in terms of clause 5 of the MOU, against a total consideration amount of Rs.51,54,500/-, which already breaches the limit statedly fixed in clause 39 read with



clause 26(a). It is further seen that assured return is not allowed in perpetuity rather it is payable till the said unit is leased out to the perspective lessee(s). Hence, no rectification is required."

The respondent states that the clause mentioned in the MoU by no stretch of imagination can be said to be one sided, unreasonable and arbitrary in nature or having been inserted by the promoter using its dominant position. It further states that clause 39 read with Clause 26(a) of the MOU establishes that the maximum liability of the respondent cannot exceed the amount specified i.e. Rs. 6500/- per sq.ft. of the super area. It is to be noted that the super area of the unit under question is 2,000 sq.ft. and hence the maximum liability of the respondent cannot exceed Rs. 1,30,00,000/- (Rs. 6500per sq.ft. 2000 sq.ft.). **It is important to note that the respondent has already paid an amount of Rs. 92,05,161/- to the complainant as assured return and therefore, in term of clause 39 read with clause 26(a) of the MoU, the maximum liability of the respondent i.e. Rs. 1,30,00,000/- (Rs. 6500per sq.ft. 2000 sq.ft.) has not been breached.** It is deserved to be mentioned here that the respondent has never cancelled the MOU opting the buyback option as per clause 26 which has been stated to be set-aside by the Authority in Sl. No. I of the Order dated 27.02.2024.

Finding:

In the present case, the MOU has been executed between the parties, the complainant has paid an amount of Rs.51,54,500/- including service tax. However, the respondent has paid assured return amounting to Rs. 92,05,161/- to the complainant and has also offered the subject unit/property to the complainant. The amount stated under clause 39 read with Clause 26(a) of the MOU is specifically for the purpose of determining/calculating the maximum liability of the respondent in case of assured return payable or for determining the maximum liability of the Developer in any other eventuality including in case of buy back/refund/interest/damages etc which reproduced below as:

39. that in no event and under no circumstances the maximum liability of the Developer on all the accounts together including refund/interest/damages etc. whatsoever shall exceed the amount as stated in clause 26(a) hereinabove.

26(a) either buy back the Said Unit from the Intending Allottee at the buyback price of Rs. 6,500/- per sq ft of super area, or.



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

In terms of Clause 26(a) of the MOU the liability of the respondent in the present matter would amount to buy back of the super area allotted to the complainant i.e. 2000 sq.ft. at the rate of Rs. 6500/- per sq.ft. which comes to Rs. 1,30,00,000/- (Rs. 6500per sq.ft. X 2000 sq.ft.), which was overlooked while passing the proceedings cum order dated 27.02.2024. Hence, as per clause 39 of the MOU, the respondent's admitted liability to pay maximum assured return is of Rs. 1,30,00,000/-. In view of the above, the payment of assured return to the complainant under para 67 (dot 1) of the detailed order dated 09.08.2023 shall be limited to the extent of the maximum liability of clause 39 read with clause 26(a) of the MoU dated 10.08.2012. in view of the above, the direction of the Authority in para 67 dot 1 shall read as under:

"The respondent is directed to pay the arrears of amount of assured return amount from January 2019 till September 2019 as per clause 5 of the MoU. Further, the respondent/builder would also be liable to pay monthly assured return at agreed rate of the super area till the said unit is leased out to the perspective lessee(s). The above liability of the Respondent shall be limited to the to the extent of the maximum liability specified under clause 39 read with clause 26(a) of the MoU dated 10.08.2012."

It is also clarified that the amount of Rs. 51,54,500/- is the basic sale consideration including service tax of the unit which may be read as such in serial no.1 of rectification order dated 27.02.2024.

Complaints stand disposed of. Files be consigned to registry

(Ashok Sangwan)
Member

V.I-3
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.08.2024