

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

Complaint no. : 5356 of 2023
Complaint filed on : 24.11.2023
Date of first hearing: 06.03.2024
Date of decision : 26.03.2025

Piyush Saggi through Power of Attorney
holder Sh. Suresh Saggi

R/o- 33-A, Neel Kanth Apartment 46, I.P
Extension Patparganj, Delhi- 110092

Complainant

Versus

M/s Victory Infraedge Private Limited
Registered Office: Unit no. 702-704, D- Mall,
Plot no. A-1, Netaji Subhash Place,
Pitampura, New Delhi- 110034

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Sushil Yadav, Advocate

Complainant

None

Respondent

ORDER

1. The present 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 to the allottee as per the agreement for sale executed inter-se them.

A. Unit and Project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"VG 48", Sector- 48, Sohna Road, Gurugram
2.	Rera Registered/Not Registered	Unregistered
3.	DTCP License No.	04 of 2011 dated 20.01.2014 valid upto 05.01.2021
4.	Unit no.	G-27, Ground Floor (Page 16 of complaint)
5.	Unit admeasuring	571 sq. ft. (Super Area) (Page 16 of allotment letter and page 60 of MOU executed between the parties)
6.	Allotment Letter	10.08.2017 (Page 71 of complaint)
	Buyer's agreement	10.08.2017 (Page 13 of complaint)
7.	Date of execution of MOU	30.08.2017 (Page 58 of complaint)
8.	Possession clause	11. A) <i>Schedule for Possession of the said unit</i> <i>"The Developer based on its preset plans and estimates and subject to all just exceptions endeavors to complete construction of the said building/said unit within a period of 60 months from the date of this agreement unless there shall be delay due to....."</i> (Allotment Letter at page 28 of complaint)
9.	Lease Rental Clause	"4. That the First Party shall give assured investment returns/lease rental at the rates and periods indicated hereinafter: - I. INR 103-78/- per. Sq. ft. (super area) total amounting to Rs. 59,262/- (Rupees Fifty-Nine Thousand Two Hundred Sixty Two only) per month with effect from 1st August 2017 to Till the Date of Offer of Possession. II. INR 175.31 per. Sq. ft. (super area) total amounting to Rs. 1,00,103/- (Rupees One



		<p>Lac One Hundred Three only) per month with effect from The Date of Offer of Possession to First 3 Year.</p> <p>III. INR 201.60 per. Sq. ft. (super area) total amounting to Rs. 1,15,118/- (Rupees One Lac Fifteen Thousand One Hundred Eighteen only) per month with effect from 4th to 6th Year.</p> <p>IV. INR 227.90 per. Sq. Ft. (super area) total amounting to Rs. 1,30,134/- (Rupees One Lac Thirty Thousand One Hundred Thirty-Four only) per month with effect from 7th to 9th Year."</p> <p>(Page 64 of MOU executed between the parties)</p>
10.	Due date of delivery of possession	<p>28.02.2023</p> <p>(Calculated to be 60 months from the date of agreement i.e., 30.08.2022 plus grace period of 6 months in lieu of Covid-19)</p>
11.	Basic sale Price	<p>Rs.1,06,49,150/-</p> <p>(Allotment Letter at page 21 of complaint)</p>
12.	Total amount paid by the Complainants	<p>Rs.36,37,191/-</p> <p>(Allotment Letter at page 26 of complaint and receipts annexed at page 72 to 78 of the complaint)</p>
13.	Occupation certificate	Not Obtained

B. Facts of the complaint

3. The complainant has made the following submissions: -

- a) That the complainant booked a unit measuring 571 sq. ft. in the project of the respondent for a total sale consideration is Rs 1,10,03,741/-. The complainant made payment of Rs. 36,37,191/- to the respondent vide different cheques on different dates.
- b) That the builder buyer agreement was executed between the parties on 10.08.2017 and as per builder buyer agreement the respondent had allotted a unit bearing No. G-27, ground floor having super area of 571 sq. ft. to the complainant. As per para no.11 A of the agreement, the respondent had agreed to deliver the possession of the unit within 60 from the date of builder buyer agreement i.e., 09.08.2022.

- c) That the parties also entered into memorandum of understanding on 30.10.2017 and according to clause 4 of the MOU, respondent agreed to give assured investment returns/lease rental to complainant at the rates and periods indicated hereinafter-
- i. Rs. 103.78/- per Sq. ft. (super area) total amounting to Rs. 59,262/- per month with effect from 1st August 2017 to till the date of offer of possession.
 - ii. Rs. 175.31 per Sq. ft. (super area) total amounting to Rs. 1,00,103/- per month with effect from the date of offer of possession to first 3 year
 - iii. Rs. 201.60 per sq. ft. (super area) total amounting to Rs. 1,15,118/- per month with effect from 4 to 6 Year.
 - iv. Rs. 227.90 per Sq. Ft. (super area) total amounting to Rs 1,30,134/- per month with effect from 7th to 9th Year
- d) That the complainant used to telephonically ask the respondent about the progress of the project and the respondent always gave false impression that the work is going in full mode and accordingly asked for the payments which the complainant gave on time. The complainant was shocked when he visited the site to see that construction work is not in full swing and no one was present at the site to address the queries of the complainant. It appears that respondent has played fraud upon the complainant. The only intention of the respondent was to take payments for the unit without completing the work and not handing over the possession on time.
- e) That it could be seen that the construction of the block in which the complainant unit was booked with a promise by the respondents to deliver the unit by 09.08.2022 but was not completed within time for the reasons best known to the respondents.
- f) That as per clause 14 of the agreement it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainant a compensation @ Rs.20/- per sq. ft. per month of the super area of the unit. Also, a clause of compensation at such a nominal rate of Rs.20/- per sq. ft

per month for the period of delay is unjust and the respondent has exploited the complainant by not providing the possession of the unit even after a delay from the agreed possession plan. The respondent cannot escape the liability merely by mentioning a compensation clause in the agreement. It could be seen here that the respondent has incorporated the clause in one sided buyer's agreement and offered to pay a sum of Rs.20/- per sq. ft. for every month of delay. If we calculate the amount in terms of financial charges it comes to approximately @ 2% per annum rate of interest whereas the respondent charges @ 15% per annum interest on delayed payment as per clause 5 of MOU.

- g) That on the ground of parity and equity the respondent also be subjected to pay the same rate of interest hence the respondent is liable to pay interest on the amount paid by the complainant from the promise date of possession till the unit is actually delivered to the complainant and deliver possession of the unit.

C. Relief sought by the complainant

4. The complainant has sought following relief:

I. Direct the respondent to pay lease rental @Rs.103.78/- per sq. ft. (super area) total amounting to Rs.59,262/- per month with effect from 01.07.2018 till the date of offer of possession and lease rental Rs.17,53,178/- per sq. ft. from the date of offer of possession to first three years.

5. The present complaint was filed on 24.11.2023 in the Authority. Notice sent to the respondent through e-mail (info@victoryinfra.com) was duly served on 29.11.2023. Notice was also sent to the respondent through registered post (EH372906000IN). Further, on 06.03.2024, the respondent was directed to file the reply within three weeks in the registry of the Authority. However, despite specific directions and providing an opportunity of being heard, no written reply has been filed by the respondent. Therefore, in view of order dated 28.08.2024, the defence of the respondent was struck off.

6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions oral as well as written (filed by the complainant) made by the parties.

E. Jurisdiction of the authority

7. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E. I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

"Section 11(4)(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."

10. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside the compensation

which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings regarding relief sought by the complainant.

F.I Direct the respondent to pay assured return/lease rental @Rs.103.78/- per sq. ft. (super area) total amounting to Rs.59,262/- per month with effect from 01.07.2018 till the date of offer of possession and lease rental Rs.17,53,178/- per sq. ft. from the date of offer of possession to first three years.

11. The factual matrix of the case reveals that the complainant was allotted a unit bearing no. G-27, Ground Floor admeasuring super area of 571 sq. ft. in the project of the respondent named "VG 48" situated at Sector-48, Sohna Road, Gurugram vide buyer's agreement dated 10.08.2017 for a basic sale consideration of Rs.1,06,49,150/- against which the complainants have paid a sum of Rs.36,37,191/- till date.
12. The complainant in the present case is seeking unpaid assured returns on monthly basis from the respondent as per terms and conditions of the MOU dated 30.08.2017. The complainant has submitted that as per clause 4 of the MoU, the respondent had to pay assured return/lease rentals of Rs.103.78/- of the super area i.e., Rs.59,262/- per month on the unit in question with effect from 01.08.2017 till the time of offer of possession of the said unit and thereafter @ Rs. 175.31 per sq. ft. amounting to Rs.1,00,103/- per month from the date of offer of possession till first three years.
13. At this stage, it is important to stress upon the definition of term allottee under the Act, 2016. The definition of "allottee" as per Section 2(d) of the Act of 2016 provides that an allottee includes a person to whom a plot, apartment or building has been allotted, sold or otherwise transferred by the promoter. Section 2(d) of the Act of 2016 has been reproduced 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;”

Keeping in view the above-mentioned facts and the definition of allottee as per Act of 2016, it can be said that the complainant is an allottee.

14. The complainant is seeking unpaid assured returns on monthly basis as per the MOU dated 30.08.2017 at the rates mentioned therein. It is pleaded by the complainant that the respondent has not complied with the terms and conditions of the said MoU.
15. The MoU dated 30.08.2017 can be considered as an agreement for sale interpreting the definition of the agreement for “agreement for sale” under Section 2(c) of the Act and broadly by taking into consideration the objects of the Act. Therefore, the promoter and allottee would be bound by the obligations contained in the memorandum of understandings and the promoter shall be responsible for all obligations, responsibilities, and functions to the allottee as per the agreement for sale executed inter-se them under Section 11(4)(a) of the Act. An agreement defines the rights and liabilities of both the parties i.e., promoter and the allottee and marks the start of new contractual relationship between them. This contractual relationship gives rise to future agreements and transactions between them. The “agreement for sale” after coming into force of this Act (i.e., Act of 2016) shall be in the prescribed form as per rules but this Act of 2016 does not rewrite the “agreement” entered between promoter and allottee prior to coming into force of the Act as held by the Hon’ble Bombay High Court in case *Neelkamal Realtors Suburban Private Limited and Anr. v/s Union of India & Ors.*, (Writ Petition No. 2737 of 2017) decided on 06.12.2017.

16. It is pleaded on behalf of respondent/builder that after the Banning of Unregulated Deposit Schemes Act of 2019 came into force, there is bar for payment of assured returns to an allottee. But the plea advanced in this regard is devoid of merit. Section 2(4) of the above mentioned Act defines the word 'deposit' as *an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include:*

- (i) an amount received in the course of, or for the purpose of business and bearing a genuine connection to such business including*
- (ii) advance received in connection with consideration of an immovable property, under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement.*

A perusal of the above-mentioned definition of the term 'deposit', shows that it has been given the same meaning as assigned to it under the Companies Act, 2013 and the same provides under Section 2(31) includes any receipt by way of deposit or loan or in any other form by a company but does not include such categories of, amount as may be prescribed in consultation with the Reserve Bank of India. Similarly Rule 2(c) of the Companies (Acceptance of Deposits) Rules, 2014 defines the meaning of deposit which includes any receipt of money by way of deposit or loan or in any other form by a company but does not include:

- (i) as an advance, accounted for in any manner whatsoever, received in connection with consideration for on immovable property*
- (ii) as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;*

17. So, keeping in view the above-mentioned provisions of the Act of 2019 and the Companies Act 2013, it is to be seen as to whether an allottee is entitled to assured returns in a case where he has deposited substantial amount of sale consideration against the allotment of a unit with the builder at the

time of booking or immediately thereafter and as agreed upon between them.

18. The Government of India enacted the Banning of Unregulated Deposit Schemes Act, 2019 to provide for a comprehensive mechanism to ban the unregulated deposit schemes, other than deposits taken in the ordinary course of business and to protect the interest of depositors and for matters connected therewith or incidental thereto as defined in section 2 (4) of the BUDS Act 2019.
19. The money was taken by the builder as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.
20. The Authority under this Act has been regulating the advances received under the project and its various other aspects. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the latter from the former against the immovable property to be transferred to the allottee later on. If the project in which the advance has been received by the developer from an allottee is an ongoing project as per section 3(1) of the Act of 2016 then, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings. The promoter is liable to pay that amount as agreed upon. Moreover, an agreement/MoU defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the said memorandum of understanding.

21. In the present complaint, the assured return was payable as per clause 4 of MoU, which is reproduced below for the ready reference:

"4. That the First Party shall give assured investment returns/lease rental at the rates and periods indicated hereinafter: -

- I. INR 103.78/- per. Sq. ft. (super area) total amounting to Rs. 59,262/- (Rupees Fifty-Nine Thousand Two Hundred Sixty Two only) per month with effect from 1st August 2017 to Till the Date of Offer of Possession.**
- II. INR 175.31 per. Sq. ft. (super area) total amounting to Rs. 1,00,103/- (Rupees One Lac One Hundred Three only) per month with effect from The Date of Offer of Possession to First 3 Year.**
- III. INR 201.60 per. Sq. ft. (super area) total amounting to Rs. 1,15,118/- (Rupees One Lac Fifteen Thousand One Hundred Eighteen only) per month with effect from 4th to 6th Year.**
- IV. INR 227.90 per. Sq. Ft. (super area) total amounting to Rs. 1,30,134/- (Rupees One Lac Thirty Thousand One Hundred Thirty-Four only) per month with effect from 7th to 9th Year."**

22. Thus, the assured return was payable @Rs.103.78/- per month w.e.f. 01.08.2017, till the date of offer of possession to the complainant. Moreover, the interest of the allottee is protected even after offer of possession of the unit allotted to complainant as the assured returns are payable even after offer of possession is being made to the complainant i.e., @ Rs. 175.31 per sq. ft. amounting to Rs.1,00,103/- per month from the date of offer of possession till first three years. Thereafter, Rs. 201.60/- per sq. ft. amounting to Rs.1,15,118/- per month w.e.f. 4th to 6th year and Rs. 227.90/- per sq. ft. amounting to Rs.1,30,134/- per month w.e.f. 7th to 9th year.

23. In light of the reasons mentioned above, the authority is of the view that as per the MoU dated 30.08.2017, it was obligation on the part of the respondent to pay the assured return. It is necessary to mention here that the respondent has failed to fulfil its obligation as agreed inter se both the parties in MoU dated 30.08.2017. Accordingly, the liability of the respondent to pay assured return as per MoU is still continuing. Hence, the respondent/promoter is directed to pay assured return to the complainant at the agreed rate i.e., @Rs.103.78/- per month from 01.08.2017 till the

offer of possession is issued to the complainant as per the memorandum of understanding dated 30.08.2017. Further, the assured returns are payable even after offer of possession is being made to the complainant i.e., @ Rs. 175.31 per sq. ft. amounting to Rs.1,00,103/- per month from the date of offer of possession till first three years. Thereafter, Rs. 201.60/- per sq. ft. amounting to Rs.1,15,118/- per month w.e.f. 4th to 6th year and Rs. 227.90/- per sq. ft. amounting to Rs.1,30,134/- per month w.e.f. 7th to 9th year.

G. Directions of the authority:

24. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under Section 34(f) of the act of 2016:

- I. The respondent is directed to pay the amount of assured return at the agreed rate i.e., @ Rs. 103.78/- per sq. ft. of the super area i.e., Rs.59,262/- on monthly basis from 01.08.2017 till the date of offer of possession and thereafter, @ Rs. 175.31 per sq. ft. amounting to Rs.1,00,103/- per month from the date of offer of possession till first three years. Thereafter, Rs. 201.60/- per sq. ft. amounting to Rs.1,15,118/- per month w.e.f. 4th to 6th year and Rs. 227.90/- per sq. ft. amounting to Rs.1,30,134/- per month w.e.f. 7th to 9th year.
- II. The respondent is directed to pay the above outstanding accrued assured return amounts till date along with interest rate of 9.10% per annum 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 become payable with interest @ 9.10% p.a. till the date of actual realization.
- III. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement dated 10.08.2017 and MOU dated 30.08.2017.

25. Complaint stands disposed of.

26. File be consigned to registry.

Dated: 26.03.2025

(Ashok Sangwan)
Member

Haryana Real Estate
Regulatory Authority,
Gurugram



HARERA
GURUGRAM