BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint No. : 52 of 2018
First Date of Hearing : 12.04.2018
Date of Decision : 12.09.2018

Jagjit Singh
R/o Ho.No.-102, Sector 5-A,
Chandigarh-160005. **Complainant**

Versus

M/s MVL Ltd
MVL I-Park, 6th Floor, Wing A, Near Red Cross Society Chandan Nagar, Sector15 (II), Gurgaon-122001, Haryana. **Respondent**

CORAM:
Dr. K.K. Khandelwal — Chairman
Shri Samir Kumar — Member
Shri Subhash Chander Kush — Member

APPEARANCE:
Shri Himanshu Raj — Advocate for the complainant
Shri Mudit Gupta — Advocate for the respondent

ORDER

1. A complaint dated 28.03.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and

Development) Rules, 2017 by the complainant Shri Jagjit Singh against the promoter M/s MVL Ltd., on account of failure to deliver the possession of the said IT space along with interest for delayed possession and to pay assured return agreed vide assured return agreement dated 06.09.2010. The respondent allotted IT space bearing unit no. 4A-30 in wing A with super area of 500 sq. ft. on the 4th floor of the complex in the project "India Business Centre", Sector 35, Gurugram.

2. The particulars of the complaint are as under: -

1.	Name and location of the project	"India Business Centre"
2.	Unit no.	4A-30 in wing A with super area of 500 sq. ft. on the 4thfloor
3.		
3.	Nature of unit	Multi-storeyed IT space complex
4.	Assured return agreement	06.09.2010
5.	Assured return	Clause 3.1 i.e. Rs.40/- per sq. ft. per month of super area.
6.	Total cost	Rs. 12,00,000/-
7.	Total amount paid by the complainant	Rs.12,00,000/-
8.	Percentage of consideration amount	100%
9.	BBA executed on	NOT EXECUTED Only assured return agreement executed
10.	Date of delivery of possession.	Cannot be ascertained

11.	Delay in handing over possession	Cannot be ascertained
12.	Cause of delay in delivery of possession	Due to force majeure

3. The details provided above, have been checked as per record of the case file. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent through their counsel appeared on 12.04.2018. The case came up for hearing on 12.04.2018, 02.05.2018, 26.06.2018, 17.07.2018, 26.07.2018, 16.08.2018 & 12.09.2018 respectively. The reply has been filed on behalf of the respondent on dated 17.05.2018.

4. In the present case the parties entered into assured return agreement (ARA) dated 06.09.2010. The complainant as per the signed ARA paid amount Rs.12,00,000/- vide cheque dated 13.08.2010 bearing no. 127390 and the same was acknowledged by the respondent vide article 1.3 of ARA (copy available on record as annexureC-4). Respondent as per article 3.1 of ARA was bound to pay assured return of Rs.40/- per sq. ft. per month of super area. Article 3.1 of ARA is hereby reproduced below:

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Chairman
Member
Member

"3.1. ASSURED RETURN

3.1 Till the tenant is inducted, possession is delivered to it and the lease commences and rental is

received by the allottee(s) from the tenant, the Developer, shall pay to the Allottee(s) an Assured Return at the rate of Rs 40/- per sq. ft. per month of super area of premises subject to the receipt of full/ total consideration. The assured return shall be subject to tax deduction at source. The assured return post dated cheques shall be paid in advance within 15 days of the date of receipt of payment. Date of realization of cheques shall be treated as the date of receipt of payment"

The respondent was bound to pay assured return from the signing of the ARA dated 06.09.2011 till the handing over possession to the tenant and the rental is received by the allottees as per the assured return clause mentioned above. As stated by the complainant in the facts mentioned above the respondent stopped the assured return since 26-11-2013 (Annexure E).

FACTS OF COMPLAINT

5. The complainant submitted that his hard-earned money was given to MVL Ltd. for purchasing a property in the project called "INDIA BUSINESS CENTRE" situated in village Begampur Khatola, Tehsil & District Gurugram, Haryana. The complainant opted for an IT space bearing unit no. 4A-30 in wing A with super area of 500 sq. ft. on the 4th floor of the complex. The complainant had booked the above-mentioned property on 13.08.2010 at Gurgaon.

6. The complainant submitted that it has been more than seven years from the date of aforesaid booking dated 13.08.2010 and till date no buyer agreement has been executed. The complainant has got no concrete legal paper depicting the legal ownership of the property for which he has paid a huge amount of money. The only piece of legal proof that the complainant possesses against the IT space booked by her is a provisional allotment letter which was given to him on 23.06.2015.

7. The complainant submitted that he entered into an assured return agreement on 13.08.2010 with the respondent wherein the respondent was under legal obligation to pay the complainant Rs.40 per sq. ft. per month from the date of execution of the said agreement till the delivery of possession, tenant is inducted, lease commences and rental is received by the complainant as stated in clause 3.1 of ARA. It is pertinent to mention that out of the cheques which were handed over to the complainant under the assured return agreement by the respondent, the same were returned for one or the other reason especially as bounced by the bank. On enquiring about the same, the respondent gave assurance that it was an honest mistake and they will rectify the same.

But it never got rectified and more and more cheques were returned unrealized by the bank.

8. As alleged in the complaint that, it has been more than seven years from the date of booking and still the construction of the property is not completed by the respondent. The complainant submitted that he even tried to communicate with the respondent via meetings, telephone and mail but they gave no answers about the unexecuted BBA and the due date of possession. The complainant submitted that some of the allottee(s) paid a visit to MVL head office in Gurugram & the respondent assured that the building is proposed to be ready by December 2014 but till date the construction of the property is not completed by the respondent. The complainant submitted that even though the construction is not yet completed, the respondent had offered to lease out the premises to the 3rd party without even completing the project.

9. The complainant submitted that the respondent did not deposit the TDS which was due from their side, which was to be deposited under the agreement. The complainant has written emails to the respondent regarding this default but neither the respondent responded to the query nor did deposit the TDS from their side till date.

10. The complainant submitted that the respondent has not registered the said project with the concerned authority within the stipulated time period prescribed under the section 3 of the Act. Therefore, action should be taken under the section 59 of the Real Estate (Regulation and Development) Act, 2016.

11. **Following issues have been raised by the complainant**:

    i. Whether respondent/developer has taken all necessary clearance from concerned authority?

    ii. Whether respondent is in a position to deliver actual physical possession?

    iii. Whether the title of the land is defective on which the project is being developed?

    iv. Whether the respondent failed to complete project and offer possession even after 7 years from the booking?

    v. Whether there was any deliberate misrepresentation by developer?

    vi. Whether respondent is under legal obligation to execute builder buyer agreement within reasonable time?

    vii. Whether the developer has diverted and routed all the funds and resources to another project illegally and with

malafide intentions, especially in the light of not submitting the relevant record to the concerned authority?

viii. Whether developer has violated assured return agreement?

ix. Whether the developer is under a legal obligation to hand over 10% of the estimated cost of the real estate project to the complainant under section 59 of the RERA Act, 2016/

12. **Following relief has been sought by the complainant**:

i. To direct the respondent to provide the delivery of possession.

ii. Interest on amount deposited for delay in handing over possession of IT/Cyber space measuring 500 sq ft, till date.

iii. Amount of bounced cheques and all other dues under assured return agreement till offer of possession with 18% interest.

iv. To direct the opposition party to pay Rs.20,00,000 for causing mental agony to the complainant due to non-delivery of said property.

v. To direct the opposition party to pay Rs.14,00,000 to the complainant as the deficiency in services for keeping the complainant in dark in regard to the progress of the property.

vi. To direct the opposite party to reimburse litigation cost of Rs.1, 99,999 to the complainant as he was constrained to file the same because of the callous and indifferent attitude of the opposite party and the same has been paid to the lawyer. Acknowledgement receipt is attached as annexure C-13.

In addition, following interim relief has been asked for by the complainant

i. To provide details of the allottees in India Business Centre with address and other relevant information.

ii. To take action against the respondent for not registering under RERA within given time.

iii. To direct the opposite Party to provide pending amount under assured return agreement with interest during pendency of present case.

REPLY

Preliminary Objections:

13. Respondent submitted that he had made an application for registration of said project under the RERA Act,2016 on 31.07.2017. The said project has not been registered yet and the application is still pending before the HRERA. Thus, the present complaint is not maintainable and is liable to be dismissed in limine.

14. The respondent stated that the SEBI vide its interim order dated 24.09.2013 restrained the respondent from alienating, disposing off or selling any of the assets of the respondent and further vide its final order dated 19.12.2014 classified the assured return scheme as a CIS (Collective Investment Scheme). The respondent submitted that the issue "whether assured return scheme is a CIS and therefore valid under law or not" is still pending before the Hon'ble Security Appellate Tribunal in the case of M/s MVL Ltd. Vs. SEBI (Civil Appeal No. 157/2015). The Hon'ble Delhi High court vide order(s),

dated 10.03.2017 & 19.05.2017, in company petition batch matters have also adjourned the matters pending before it.

15. The respondent submitted that the complaint is liable to be dismissed, as the reliefs sought by the complainant such as assured return, deficiency of services, loss of business & default in payment of TDS does not fall within the jurisdiction of the adjudicating authority. It is submitted that complainant till date has received an amount of Rs.8,00,000/- i.e. around 67% of amount of investment of Rs.12,00,000/. It is respectfully submitted that article 6.1 of the said agreement provides that in the event of force majeure conditions, the payment of assured return would remain suspended for such period. Force majeure condition in the present case are the orders of the SEBI and the SAT restraining the respondent from alienating, selling and disposing off assets of the said project and also the pendency of said appeal before SAT. Thus, the liability of the respondent to pay assured return is suspended as per the ARA. Even otherwise a bare perusal of clause 7.1 of annexure A of the HRERA rules,2017 evidences the legislatures intention to include "Force Majeure" as a factor, which entitles the promoter to extension of time of delivery of possession of the unit.

16. The respondent specifically denied that respondent ever approached the complainant to purchase an IT/Cyber space in the said project. It was respectfully submitted that it was the complainant who approached the respondent through a broker to purchase the IT/ Cyber space in the said project.

17. The respondent denied that respondent gave any attractive projection to the complainant. It is respectfully submitted that the complainant with complete knowledge, research & open eyes chose the assured return scheme for booking an IT space in the said project. It is specifically denied that the complainant booked IT/ Cyber space in the said project for his personal use.

18. The respondent admitted to the extent that the respondent booked IT/Cyber space in the said project measuring around 500 sq. ft. on 13.08.2010.

19. The respondent specifically denied that the buyers agreement was to get executed after the provisional registration. It is pertinent to point out here that as per clause 6.3 of the said agreement the buyers agreement was to be executed only upon the premises being leased out. However, due to the aforementioned force majeure circumstances, not

only the payment of the assured return was suspended but also the construction of the said project came to a stall.

20. The respondent denied that the complainant has no legal ownership of the property. It is specifically denied that there is any deficiency/default in services by the respondent. It is specifically denied that the complainant has been paid a huge sum of money. It is pertinent to point out that the complainant has made this allegation that the respondent is not the owner of the property for the first time. It is submitted that the complainant was allotted unit in wing A of the said project vide letter dated 23.06.2015. Despite this the complainant has raised the contention of legal ownership. It is very convenient, and the complainant did not raise this point at the time of receiving Rs.8,00,000/- towards assured return and who at this stage is making such allegations without any material or substantial evidence.

21. The respondent specifically denied that the cheques handed by the respondent were returned dishonoured and no payment was given to the complainant against such cheques.

22. It is further submitted that the assured return is paid to the complainant till 02.01.2014 despite the fact that force majeure conditions became prevalent w.e.f. 24.09.2013 only

when SEBI issued its first ad interim order, thus making excess payment of Rs. 58,500/- i.e. for the period October 2013 till December 2013 which has to be refunded back to the respondent to enable it to complete the project for handing over the possession.

23. It was further submitted that 60%of the IT space in the said project is still unsold and thus no money from sale of units are flowing into the respondent. Further in addition to the above, as a consequence of the aforementioned orders passed against the respondent, the bank refused to disburse the sanctioned loan and further also refused to give any additional term loan to the respondent. Due to the reasons the respondent was faced with financial crunch & the construction of said project came to a stall.

24. It was further submitted that factually 82% of the structure was completed in 2013 only and the respondent was in full position to handover the possession in 2014. But the SEBI order dated 24.09.2013 resulted into stoppage of disbursement of sanctioned loan by the bank resulting into financial squeeze.

25. It is pertinent to mention that the allottees were informed about the force majeure situation being faced by the

respondent. It is further submitted that the respondents will be able to handover the possession to the allottees including the complainant within 18 months after adjudication of the appeal by the SAT.

26. The respondent specifically denied that the respondent has not deposited the TDS. It is respectfully submitted that the respondent has deposited TDS against the assured return paid to the complainant. It is submitted that the execution of the buyer agreement was to be conducted in terms of clause 6.3 of the said agreement. It is pertinent to point out here that as per clause 6.3 of the said agreement the buyers agreement was to be executed only upon the premises being leased out.

27. **Determination of issues**

Issue No.1: Whether the respondent/developer has taken necessary clearance from the competent authority?

With regard to the present issue no such information has been provided regarding not taking necessary clearances from the concerned authority by the respondent. Although, counsel for the complainant intimated that the license of the project is not valid as on date and also registration certificate has not been issued. These facts were admitted by the counsel for the respondent. Counsel for the respondent

apprised that they have applied for renewal of license and have also applied for registration under RERA. Because of the fact that the company has gone into liquidation vide order dated 05.07.2018 that the respondent does not dissipate any assets as the same are taken over by the official liquidator. Counsel for the complainant produced a copy of the order dated 25.07.2018 passed by Hon'ble High Court of Delhi on an application filed by the company against the orders of liquidation. The Hon'ble High Court stayed the appointment of provisional liquidator. The authority observed that all necessary clearances/approvals are not available with the respondent whatsoever and the license has not been renewed so far and the project is also incomplete.

Issue no.2: Whether the respondent is in a position to deliver actual physical possession?

The respondent has not applied for occupation certificate/completion certificate; accordingly, they are not in a position to deliver the physical possession of the unit.The respondent's counsel has made a statement that because of

the SEBI order, they have not been able to complete the construction and give possession.

Issue no.3: Whether the title of the land is defective on which the project is being developed?

Regarding title of the land, counsel for the complainant was unable to produce any record, accordingly this issue is decided in negative.

Issue no. 4: Whether the project is complete or not?

Yes, the project is still incomplete. Accordingly, the respondent has failed to complete the project and offer possession even after 7 years from the booking.

Issue no.5: Whether there was any deliberate misrepresentation on the part of the builder?

Counsel for the complainant submitted that this is no misrepresentation, accordingly, this issue was withdrawn.

Issue no.6: Whether respondent is under legal obligation to execute builder buyer agreement within reasonable time?

Counsel for the respondent mentioned that there was a legal assured return agreement wherein necessary details about the project and possession have been mentioned and the

same is at par with the builder buyer agreement. Once the project is completed and possession is handed over, conveyance deed will be executed by the respondent.

Issue 7: Whether the developer has diverted and routed all the funds and resources to another project illegally and with malafide intentions, especially in the light of not submitting the relevant record to the concerned authority?

Counsel for the complainant mentioned that the project is 84% complete whereas counsel for the complainant stated that the project is 92% complete. Accordingly, it cannot be said that funds have been diverted as the project is nearly completion and nothing on the record has been produced to prove that funds have been diverted by the counsel for the complainant.

Issue no. 8: Whether developer has violated assured return agreement?

Counsel for the complainant has stated that as per agreement, payment of the assured return was made by the respondent for some time but later on the respondent stopped making payment and at the same time, some of the cheques given by them were bounced. Counsel for the complainant brought to

the notice of the authority that the respondent stopped paying assured return from 01.01.2012 while the document submitted by the respondent with reply regarding payment of assured return proves that the assured return was paid upto 26.11.2013 whereas interim SEBI order has come into effect on 26.9.2013 which was later on confirmed with the final order on 19.12.2014.

Yes, this issue is decided in affirmative. The developer has stopped the assured return payment.

Issue No. 9: Whether the developer is under a legal obligation to hand over 10 % of the estimated cost of the real estate project to the complainant under section 59 of the RERA Act, 2016?

Registration branch shall initiate penal action for not registering the project under RERA within the requisite time. The authority has decided to take suo-motu cognizance against the said promoter for not getting the project registered and for that separate proceeding will be initiated against the respondent u/s 59 of the Act.

As far as decision on relief i.e. to provide all the details of the allottees in India Business Centre with addresses and all other relevant information is concerned, the respondents

have already applied for registration and in the application for registration all such necessarily details which are required by any allottee have to be provided. Accordingly, the respondent is directed to submit details of the project within 15 days from the issue of this order otherwise legal proceedings shall be initiated against them.

As agreed by both the counsel for the respondent as well as complainant, the project was at least complete to the extent of 84% in August 2013. Subsequently, the SEBI passed an order on 26.9.2013, the operative part in para No.12 of the order of the SEBI dated 26.9.2013 is as under: -

> *In view of the fore-going, I, in exercise of the powers conferred upon me under sections 11 (1), 11(B) and 11 (4) of the SEBI act read with Regulation 65 of CIS Regulations, hereby direct MVL and its Directors, viz Shri Prem Adip Rishi, Shri Praveen Kumar, Shri Rakesh Gupta, Shri Vinod Malik, Shri Vinod Kumar Khurana, Shri Vijay Kumar Sood and Ms. Kalpana Gupta,*
>
> a. *Not to collect any more money from investors including under the existing IBC Project;*
> b. *Not to launch any new scheme.*
> c. *Not to dispose of any of the properties or alienate any of the assets of the IBC Project;*
> d. *Not to divert any funds raised from public under the IBC Project, which are kept in bank account(s) and/or in the custody of the company.*

Later on, SEBI in their final order dated 19.12.2014 held that this project is not purely a real estate transaction,

rather it specified all the ingredients of the CIS. Para No.10 of the said judgment is as under: -

> *10 (b) MVL Limited and its directors viz., Mr. Prem Adip Rishi, Mr. Praveen Kumar, Mr. Rakesh Gupta, Mr. Vinod Malik, Mr. Vinod Kumar Khurana, Mr. Vijay Kumar Sood and Ms. Kalpana Gupta shall wind up the existing Collective Investment Schemes and refund the monies collected by the said company under the schemes with returns which are due to its investors as per the terms of offer within a period of three months from the date of this Order and thereafter, within a period of fifteen days, submit a winding up and repayment report to SEBI in accordance with the SEBI (Collective Investment Schemes) Regulations, 1999, including the trail of funds claimed to be refunded, bank account statements indicating refund to the investors and receipt from the investors acknowledging such refunds.*

This decision has been challenged by the respondent in Securities Appellate Tribunal (SAT) in appeal No.157 of 2015.

28. **Findings of the Authority:**

Keeping in view the facts and circumstances of the case, even the basic issue whether it is a real estate project or collective investment scheme has been challenged in the SAT in appeal and the SEBI has already held that this being a collective investment scheme is without their approval. SEBI had ordered that all the money alongwith interest be returned to the investors. The remedy with the Real Estate Regulatory

authority is also more or less on the same pattern i.e. in case of failure to give possession by the due date, the allottee shall be refunded the money paid by him to the promoter alongwith interest as per prescribed rate. As the matter is already with the SEBI/SAT, accordingly there is no case left for the present before this authority and to continue further proceedings in the matter. Let the issue be decided by the SEBI/SAT. Once the SAT set aside the order of the SEBI then only allottee may come to us for proceedings under the RERA Act.

29. Thus, the authority, exercising powers vested in it under section 37 of the Haryana Real Estate (Regulation and Development) Act, 2016 hereby issues directions to the promoter to complete the application for registration within next 15 days otherwise penal proceedings shall be initiated against them.

The complainant is at liberty to approach this authority for enforcement of rights by the complainant and fulfillment of obligations by the promoter, if the matter is settled by the SAT against the orders of the SEBI and declaring this project as a real estate project.

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Chairman
Member
Member

30. The order is pronounced.

31. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.09.2018