

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

**Complaint No. : 461 of 2018**  
**First date of hearing: 06.06.2018**  
**Date of Decision : 29.10.2018**

S. K. Kapoor and  
Mrs. V.B. Kapoor  
Both R/o 608, Pocket E, Sector-21,  
Gurugram, Haryana.

**Complainants**

Versus

M/s MVL Ltd,  
1201B, Hemkunt Chambers,  
89, Nehru Place,  
New Delhi  
and others.

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar  
Shri Subhash Chander Kush

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Complainant in person  
Shri Jarnail Singh

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. A complaint dated 19.06.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Mr. S.K. Kapoor and Mrs. V.B. Kapoor, 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 agreements dated 11.06.2010 and 10.08.2010. The respondent allotted the spaces of admeasuring about 1102 sq. ft. and 1000 sq. ft. in the project “India Business Centre” Sector 35, Gurugram.

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

i.	Name and location of the project	India Business centre, Sector 35, Begumpur, Khatula, Gurugram.
ii.	RERA registered/ not registered.	<b>Not registered</b>
iii.	space allotted	approximately 1102 sq. ft. on 3rd floor approximately 1000 sq. ft on 4th floor
iv.	Booking date	06.09.2012
v.	Date of execution of assured return Agreements	11.06.2010 and 10.08.2010
vi.	Assured Return	As per article 2.1 Rs 36.10 per sq. ft. per month till the offer of possession. As per article 3.1 Rs 36.60 till the tenant if inducted, lease commences and rental is received by the allottees from the tenant.
vii.	Basic sale price	Rs. 39,78,220/- Rs 36,60,000
viii.	Total amount paid by the complainants till date (as per the agreement)	Rs. 39,79,309/- Rs 34,77,000.
ix.	Percentage of consideration amount	approximately 95%
x.	Date of delivery of possession	cannot be ascertained



xi.	Delay in handing over possession till date	cannot be ascertained

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 17.07.2018. The case came up for hearing on 21.08.2018 and 13.09.2018. The reply has been filed on behalf of the respondent on dated 12.09.2018.
4. The respondent was bound to pay assured return from the signing of the assured return agreements till the handing over possession to the tenant and the rental is received by the allottees as per the assured return clause. As stated by the complainants in the facts mentioned above the respondent stopped the assured return since 19.11.2013



#### FACTS OF THE CASE:

5. That between May to June 2010, the respondent advertised in leading local dailies about their new commercial project under

the name “India Business Centre” to be developed over the land situated in revenue estate of Begumpur, Khatula, tehsil and district Gurugram, Haryana.

6. The complainants visited the office of the respondent in May 2010 and booked two spaces of about 1000 and 1102 sq. ft. on the third floor and fourth floors respectively of the project.
7. The respondent offered that if the complainants could pay the cost of space in advance, they had a scheme of “assured return” under which they would pay 1% of the rate of sale per square foot area per month, subject to deduction of tax at source.
8. That on 31.05.2010 the complainants handed over a cheque of Rs. 37,79,309 to the respondent amounting to 95% of the purchase price and on 11.06.2010 an agreement for assured return was executed. (Agreement no 106)
9. That on 29.07.2010 the complainants handed over a cheque of Rs 34,77,000 amounting to 95% of the purchase price for the space admeasuring 1000 sq. ft. on the 4<sup>th</sup> floor of the said project and on 10.08.2010 an agreement for assured return was executed (Agreement no 123).



10. That in terms of ARA no 106 dated 11.06.2010, the respondent had to pay assured return @ Rs 34.29 per sq. feet per month for the 1102 sq. ft area subject to deduction of tax. Accordingly, the respondent had to pay Rs 17,005 to each of the complainants being the joint holders.
11. That similarly in terms of ARA NO 123 dated 10.08.2010 the respondent had to pay assured return @Rs 34.77 per sq. ft. per month for 1000 sq. ft area, subject to deduction of tax. Accordingly, the respondent had to pay Rs 15,646 to each of the complainants being the joint holders, starting from 04.08.2010.
12. That after paying the assured return under both the ARA, till February 2012, the respondent started defaulting and the delay increased gradually from one month to 25 months.
13. That after delay in payment for more than 25 months, the respondent stopped paying assured returns and the post dated cheques issued by the respondent for the next assured returns started getting dishonoured by their bank.
14. That the complainants visited the respondent several times enquiring about the delay and untimely returns. Later the



complainants were shocked to know that the construction of the project had also been stalled and the respondents have been duping other people too in the name of offering space in the said project.

15. The complainants lodged a complaint with the Economic Offences Wing of the Delhi police. Also, a complaint under section 138 of Negotiable Instruments Act, 1881 has been filed.
16. That the respondent has also not deposited the tax deducted at source amount to Rs 37,73,016 to the government in spite of clear indication of the respective PAN numbers of the complainants.
17. That apart from the unpaid and outstanding assured returns in respect of both the ARA's, the respondent has also defaulted in paying interest which amounts to Rs 25,65,894.
18. The complainants are entitled to an interest @24% per annum for the delay beyond one month for the stipulated schedule of payment. Therefore the interest for the delayed assured returns also has been calculated @24% per annum.



**ISSUES RAISED BY THE COMPLAINANT:**

19. The following issues has been raised by the complainants:

- i. Whether or not the respondent is bound to complete the project India Business Centre and hand over the possession of the said spaces to the complainants.
- ii. Whether or not the respondent is bound to refund the amounts of Rs 37,79,309 and Rs 34,77,000 on not being able to hand over the possession together with compounded interest @24% per annum from the date of the respective cheques till the date of payments.
- iii. Whether or not the respondent is entitled to pay Rs 37,73,016 being total of unpaid assured returns from the date of default till the date of filing the complaint.
- iv. Whether or not the respondent is liable to pay an interest @24% on the delayed, defaulted and unpaid assured returns amounting to 25,65,894?
- v. Whether or not the respondent is liable to pay the complainants the TDS amounting to 72,580 which was



supposed to be deposited with the income tax authorities,  
but the respondent has failed to do so?

**RELIEF SOUGHT BY THE COMPLAINANT:**

20. The following relief has been sought by the complainant:

- i. To complete the construction of the project of IBC in a time bounded manner and hand over the unencumbered, peaceful and undisputed possession of the spaces after the execution of the buyers agreement.
- ii. That in the event of the respondent not being able to hand over the possession, to refund the amount of Rs 37,79,309 and Rs 34,77,000 together with compounded interest @24% from the date of respective cheques till the date of payments.
- iii. To pay Rs 37,73,016 being the total of unpaid assured returns from the date of default till the date of filing of complaint.
- iv. To pay interest @24% p.a. on the delayed, defaulted and unpaid assured returns totalling to Rs 25,65,894 .





- v. That the TDS amount not deposited with the income tax authorities amounting to Rs 72,580 be paid to the complainants.
- vi. To pay Rs 10,00,000 towards mental agony, physical strain towards compensation and Rs 3,00,000 towards litigation charges.
- vii. To pay the pendente lite assured returns of Rs 37,788 per month in terms ARA No. 106 and Rs 34,770 per month in terms of ARA No. 123 together with interest @24% p.a.

**DETERMINATION OF ISSUES:**

21. In respect to the issues raised by the complainants, it has been observed that even the basic issue whether or not 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. Thus all the issues raised by the complainants have become infructuous.

**FINDINGS OF THE AUTHORITY:**

23. 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 along with 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 along with 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.



24. The authority relies on para 6 of Supreme Court judgment dated 25.07.1997 titled as ***K. Ajit babu and others v Union of India and others (1997 6 SCC 473)*** which mentions about the doctrine of precedent. Since the authority has taken a view in complaint bearing No.45/2018 case titled as Mr. Ravibir Singh

versus M/s MVL LTD and other similar situated cases the authority cannot go beyond the view already taken.

24. Thus, the Authority, in previous similar matters while exercising powers vested in it under section 37 of the Haryana Real Estate (Regulation and Development) Act, 2016 had issued 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.

34. The order is pronounced.

35. Case file be consigned to the registry.



**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Date:-29.10.2018

**PROCEEDINGS OF THE DAY**

Day and Date	Monday and 29.10.2018
Complaint No.	461/2018 Case titled as Mr. S.K Kapoor & anr V/s M/s MVL Ltd.& Ors.
Complainant	Mr. S.K Kapoor & anr
Represented through	Complainant in person
Respondent	M/s MVL Ltd.& Ors.
Respondent Represented through	Shri Jarnail Singh, authorized representative on behalf of the respondent.
Last date of hearing	3.10.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

**Proceedings**

Since there is no domain of RERA Act as this case comes within the legal issue pertaining to SEBI Act, as such instant case is also decided as already decided in similar situated cases for which a detailed order has already been written. This case may also be clubbed with those cases. A detailed order has been passed on 12.9.2018, in complaint bearing No.45/2018 case titled as Mr. Ravibir Singh versus M/s MVL LTD and other similar situated cases.

Order is pronounced. Complaint is disposed off. Detailed order will follow. File be consigned to the registry.

Samir Kumar  
(Member)

Subhash Chander Kush  
(Member)

Dr. K.K. Khandelwal  
(Chairman)  
29.10.2018