

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

**Complaint No. : 175 of 2018**  
**First date of hearing: 24.05.2018**  
**Date of Decision :**

1. Sh. Bharam Singh  
2. Smt. Murti  
R/oVPO Shikohpur, tehsil Manesar Distt. **Complainants**  
Gurugram-122004

**Versus**

Venetian LDF Projects LLP  
through its Directors  
R/o 205, Time centre,  
Golf Course Road, Sector-54, Gurugram **Respondent**

**CORAM:**

Dr. K.K. Khandelwal **Chairman**  
Shri Samir Kumar **Member**  
Shri Subhash Chander Kush **Member**

**APPEARANCE:**

Shri Rajesh Lal Advocate for the complainants  
Shri Avnish Kumar Legal revenue officer on behalf of  
the respondent



**ORDER**

1. A complaint dated 19.04.2018 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 Sh. Bharam Singh and Smt. Murti, against the promoter Venetian LDF Projects LLP through its directors, on account of failure to deliver the possession of the said space along with interest for delayed possession and to pay assured return agreed vide MOU executed on 09.07.2014. The respondent allotted space, on 2<sup>nd</sup> floor measuring 250 sq. ft. in the project “83 Avenue” Sector 83, Gurugram.

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

1.	Name and location of the Project	“83 Avenue” Sector -83, Gurgaon
2.	Registered/ unregistered	Not registered
3.	DTCP licence no.	12 of 2013
4.	Flat/unit no.	Not allotted
5.	Flat measuring	250 sq. ft.
5.	Date of execution of MOU	09.07.2014
6.	Assured return	Rs.80 per sq.ft. per month of super area
8.	Date of execution of BBA	<b>NOT EXECUTED</b>
9.	Total amount paid by the complainant till date	Rs. 15,55,620/-
10.	Total Consideration	Rs. 15,00,000/-
11.	Due date of possession	Cannot be ascertained
12.	Delay in possession	Cannot be ascertained



3. The details provided above have been checked on the basis of record available in the case file which has been provided

by the complainant and the respondent. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 05.07.2018. The case came up for hearing on 24.05.2018, 05.07.2018, 09.08.2018, 25.09.2018, 25.10.2018 and 27.11.2018. The reply has been filed on behalf of the respondent on 31.07.2018 which has been perused.

4. In the present case parties entered into memorandum of understanding (MOU) dated 09.07.2014. The complainant as per the signed MOU paid amount Rs. 15,55,620 /- and the same was acknowledged by the opposite party vide clause 1.1 of MOU cheque no. dated 07.07.2014. Copy available on record as annexure C-1. Opposite party as per article 3.1 of MOU was bound to pay assured return of Rs. 80/- per sq. ft. per month of super area. Article 3.1 of MoU is hereby reproduced below:

**“3.1. ASSURED RETURN**

*3.1 Till the notice for offer of possession is issued, the developer shall pay to the allottee an assured return at the rate of Rs. 80/- per sq. ft. of super area of premises per month. After completion of construction, till tenant is inducted possession is delivered to tenant & the lease commences and rental is received by the allottee from the tenant, the developer shall pay to the allottee an assured return @ Rs. 66.75/- per sq. ft. of super*



*area of premises per month for a period of three years..."*

5. The respondent was bound to pay assured return from the signing of the MOU dated 09.07.2010 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 opposite party stopped the assured return since Jan 2017.

#### **Facts of the complaint**

6. Briefly stated, the facts of the case as culled out from the case of complainant are that the complainants booked a commercial colony named 83 Avenue in Sector 83, Village Sihi, Tehsil Manesar, District Gurugram and agreed for purchase of food court on the 2<sup>nd</sup> floor having 250 sq. ft. with assured return @ 80/- per sq. ft. of super area of premises per month till tenant is inducted possession and the parties executed the MoU on 09.07.2014 and thereafter, the respondents issued cheques of Assured return.
7. The complainants submitted that construction of the project has been stopped since May 2016 and status quo is maintained till date and post-dated cheques from January



2017 till date is not paid by the firm and nil conversion is received in this regard.

8. Funds due on maturity after exercising buy back option i.e. after completion of 36 months is still not paid by the firm.
9. TDS deducted for assured return for F/Y 2016-17 @ 10% has not been submitted to the income tax department. Complainants submitted that builder buyer agreement has not been given by the firm till date.

**10. Issues raised by the complainants**

- i. Whether the complainants are entitled for timely delivery of possession along with interest for the unit having super area of 250 sq. ft.?
- ii. Whether the respondents are liable to pay assured returns as per the MOU?

**11. Relief Sought**

A. The amount as per the MOU shown below is to be paid to the petitioner

- i. Amount aid for 250 sq. ft. virtual space 15,55,620
- ii. Assured return amount from January 17 to 15.07.2017  
10,000 /- each month = 1,30,000/-



B. TDS not deposited to IT department for financial year 2016-17  
i.e. 18,000/-

\* Interest 12 % for 16 days for the month of July 17 i.e. Rs.  
9,086/-

\* Interest 12% from August 17 to March 2018-1,36,920/ -  
Grand Total = 18,48,996 / -

C. A total of Rs. 11,06,172 /- falls due to the petitioner as on  
31.03.2018.

OR

Possession of the unit having super area of approx. 250 sq. ft.  
in the said complex should be delivered to the petitioners.

**Respondent reply on behalf of respondent no. 1 & 4**

12. The respondents submitted that the complainants have filed  
the complaint just to harass the answering respondents. The  
complainants, despite repeated notices for payment of due  
instalments, has not deposited the same and is deliberately  
putting obstructions to the fast progression of the project. In  
order to avoid criminal action against the complainants for  
defaulting on payment of due amount to the complainants,  
with the sole intent to harass and gain unjust enrichment,  
the complainants have filed the present complaint .





The respondent submitted various preliminary objections and submissions. They are as follow:

13. Firstly, the answering respondents submitted that the present complaint is not maintainable in the eyes of law, especially the laws, provisions and rules of The Real Estate (Regulation And Development) Act, 2016 as the project in question is not registered with RERA due to pendency of renewal of license before Directorate of Town & Country Planning, Haryana
14. Secondly, it would become crystal clear that complainants are not "allottee, but are an investors" who are only seeking assured return from the answering respondents, by way of present petition, which is not maintainable under RERA.
15. The answering respondents admitted fact that the complainants have booked the said virtual space (in the form of food court) by way of MOU (dated 15.7.2014) and as per MoU, complainant has been receiving assured return in the form of profit and thus, complainants are the investors not the allottee as they have booked the said virtual space with a sole motive to earn profits.
16. The complainants have concealed material facts from this hon'ble authority and they have not disclosed that they are



the property brokers/investors and have booked the said virtual space specially for the purpose of gaining advantage as on both ways they would gain profits. Initially by way of assured return and later, they would sell down the virtual space to any prospective party, who wanted to install their food or other items shop as the virtual space is not a fixed space and can be taken/given anywhere in the entire floor. Even article 2 of MoU clearly stipulates that the complainants have booked the present food court (virtual space) for the purpose of leasing it further for gaining commercial advantage.

17. The respondents submitted that they have never issued any kind of any advertisement in any newspaper or other media inviting applications for purchase of flat/ apartment/ shops in the real estate project located at 83, Avenue, Sector-83. It is matter of record that complainants have to make total sale consideration of Rs. 17,05,000/- to the answering respondents, whereas they have paid only Rs. 15,55,620/-

18. The respondent denied that post-dated cheques from January 2017 to till date has not been paid by the firm and no conversation in this regard has been received. The respondents have held the said assured return cheques due to demonization and stopping of environment clearance





work by the NGT, which affected the cash flow of money in the market and by the prospective buyers, which ultimately led to holding of payment of assured return cheques.

19. The respondent denied that TDS deducted for assured return for F/y 2016-1017 @10 % has not been submitted to the income tax department and it is stated that question of execution of buyer agreement does not arise in the present case as the answering respondents have not received the full and final payment from the complainants.

#### **Findings of the authority**

20. The application filed by the respondent for rejection of complaint raising preliminary objection regarding jurisdiction of the authority stands dismissed. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

#### **Decision and directions of the authority**

21. Keeping in view the authority is view that a Memorandum of Understanding has been signed inter-se the parties on



09.07.2014. Vide article 3 sub clause 3.1 of MoU which reads as under:-

*“Till the notice for offer of possession is issued, the developer shall pay to the allottee an assured return at the rate of Rs.80/- (Rupees Eight) per square feet of super area of premises per month (hereinafter referred to as the ‘Assured return’. After completion of construction till tenant is inducted possession is delivered to tenant and the lease commences and rental is received by the allottee from the tenant, the developer shall pay to the allottee (s) an assured return @ Rs.66.65/- (Rupees Sixty Six and paise Sixty Five only) per square feet of super area of premises per month for a period of three years (hereinafter referred to as the Assured return). The allottee agrees to pay the balance premium as per the Payment Plan mentioned in Schedule-1 of this MoU.*

*The assured return subject to tax deduction at source, which shall be payable on or before 10<sup>th</sup> of every English Calendar Month on due basis”.*

Complainant entered into an assured return scheme + a plan for prospective owning of the area (not specified in MoU). However, no specific date for grant of possession has been placed on record, it is only a MoU which cannot be treated to be a contractual agreement between the parties.

As already decided by the authority in complaint no.141 of 2018 titled as Brhimjeet Versus M/s Landmark Apartments Pvt. Ltd. no case is made out by the complainant. Counsel for respondent has placed on record a Supreme Court judgment dated 25.7.1997 vide which he has pleaded the doctrine of precedent. Since the authority has taken a view much earlier as stated above, the authority cannot go



beyond the view already taken. In such type of assured return schemes, the authority has no jurisdiction, as such the complainant is at liberty to approach the appropriate forum to seek remedy. However, at the instance of the complainant, a direction is issued to the respondent/builder to complete the construction work within the time framed as per MoU and fulfil his committed liability

22. The respondent has been asked to register the project at the earliest and this shall be treated as a show cause notice as to why the penal proceedings should not be initiated against the respondent under section 59 for violation of section 3 (1) Act ibid, whereunder the penalty amount may extend upto 10% of the estimated cost of the project.

23. Detailed order is pronounced.

24. File be consigned to the registry.

(Samir Kumar)  
Member

(Subhash Chander Kush)  
Member

HARERA  
GURUGRAM

(Haryana Real Estate Regulatory Authority, Gurugram)

Dated: 27.11.2018



**PROCEEDINGS OF THE DAY**

Day and Date	Tuesday and 27.11.2018
Complaint No.	175/2018 Case titled as Mr. Bharam Singh & Ors. Vs M/s Venetian LDF Projects LLP & Ors
Complainant	Mr. Bharam Singh & Ors.
Represented through	Ms. Neeta Sinha, Advocate for the complainant.
Respondent	M/s Venetian Ldf Projects Llp & Ors
Respondent Represented through	Mr. Avnish Kumar Legal Revenue Officer on behalf of the respondent.
Last date of hearing	25.10.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

**Proceedings**

Arguments heard.

A Memorandum of Understanding has been signed inter-se the parties on 9.7.2014. Vide Article 3 sub clause 3.1 of MoU which reads as under:-

***“Till the notice for offer of possession is issued, the developer shall pay to the allottee an assured return at the rate of Rs.80/- (Rupees Eight) per square feet of super area of premises per month (hereinafter referred to as the ‘Assured return’. After completion of construction till tenant is inducted possession is delivered to tenant and the lease commences and rental is received by the allottee from the tenant, the developer shall pay to the allottee (s) an assured return @ Rs.66.65/- (Rupees Sixty Six and paise Sixty Five only) per square feet of super area of premises per month for a period of three years (hereinafter referred to as the Assured return). The allottee***

***agrees to pay the balance premium as per the Payment Plan mentioned in Scheduled-1 of this MoU.***

***The assured return subject to tax deduction at source, which shall be payable on or before 10<sup>th</sup> of every English Calender Month on due basis”.***

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In such type of assured return schemes, the authority has no jurisdiction, as such the complainant is at liberty to approach the appropriate forum to seek remedy. However, at the instance of the complainant, a direction is issued to the respondent/builder to complete the construction work within the time framed as per MoU and fulfill his committed liability.

Complaint is disposed of accordingly. Detailed order will follow.

File be consigned to the registry.

Samir Kumar  
(Member)  
27.11.2018

Subhash Chander Kush  
(Member)  
27.11.2018