

**PROCEEDINGS OF THE DAY**

Day and Date	Tuesday and 27.11.2018
Complaint No.	173/2018 case titled as Ms. Jogat Devi & Ors Vs M/s Venetian LDF Projects LLP & Ors
Complainant	Ms. Jogat Devi & 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 had been signed inter-se the parties on 23.8.2014. 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”.***

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 an 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 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

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

**Complaint No. : 173 of 2018**  
**Date of Institution : 19.4.2018**  
**Date of Decision : 27.11.2018**

1. Smt. Jogat Devi.  
R/o – VPO Shikohpur,  
Tehsil Manesar Distt. Gurugram

2. Smt. Shakuntala  
R/o – H.no. 459,  
VPO Bolni, Distt. Rewari

**...Complainants**

Versus

1. Venetian LDF Projects LLP  
Office at:205, Golf Course Road,  
Sector-54, Gurugram  
Also at: 85-86, Manglapuri,  
Mehrauli Gurugram Road, New Delhi

2. Vivek Seth Director  
R/o- E-238, 2<sup>nd</sup> floor,  
Sector-54, Gurugram,  
Haryana- 122001

3. Vijesh Goel Deirector  
R/o- 541, Sector-9,  
Gurugram, Haryana-122001

4. Yogesh Khandari Director  
R/o- D-37, Tulsi Apartment,  
Sector-14, Rohini,  
New Delhi- 110085

**...Respondents**



**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Smt Neeta Sinha  
Shri Avnish Kumar

Advocate for the complainants  
Legal revenue officer for  
respondents

**ORDER**

1. A complaint dated 19.4.2018 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 complainants Smt. Jogat Devi and Smt. Shakuntala against Venetian LDF projects LLP and its directors Mr. Vivek Seth, Mr. Vijesh Goel and Mr. Yogesh Kandhari, on account of violation of the article 3.4 of MOU executed on 15.7.2014 in respect of unit described as below for not handing over possession and not providing assured returns which is an obligation of promoter under section 11(4)(a) of the Act *ibid*.



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

1.	Name and location of the Project	'83 Avenue' project, Sector 83, Village Sihi, Tehsil Manesar, Distt Gurugram.
2.	Registered / Not Registered	<b>Not Registered</b>
3.	Unit/ Villa No.	Food court (virtual space)
4.	Unit measuring	250 Sq. Ft. (approx.)
5.	Date of Execution of ABA	Not executed
6.	Date of execution of MoU	23.8.2014
7.	Amount paid by the complainant till date	Rs.15,55,620/-
8.	Total consideration	Rs.15,00,000/-
9.	Percentage of amount paid	100%
10.	Date of allotment	06.04.2014
11.	Date of delivery of possession.	Not delivered
12.	Type of plan	Construction linked plan
13.	Delay of number of months/ years	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. No builder buyer agreement is available on record for the food court but an MOU is provided which was executed on 15.7.2014.

4. Taking cognizance of the complaint, the authority issued notice on 30.4.2018 to the respondent to appear before the authority on 24.5.2018 and to file the reply. The case came up for hearing on 24.5.2018, 5.7.2018, 9.8.2018, 25.9.2018, 25.10.2018 and



27.11.2018. The reply was filed by respondents on 31.7.2018 by respondent no.1 and 4.

### FACTS OF THE CASE

5. The complainant booked a "FOOD COURT" in a commercial colony 83 Avenue in Sector 83, Village Sihi, Tehsil Manesar, Distt Gurugram having super area of approx 250 sq. ft' with assured return @80/- per sq. ft' of super area per month till tenant is inducted possession. The MOU was executed on 15.7.2014 after which the respondents issued cheques of assured return.
6. After receiving information for holding of assured return cheques in the name of Jogat Devi and Shakuntala, no official correspondence was received from the firm. The office situated at JMD Megapolis, FF 122124, Sohna Road, Gurugram is closed since 2017. The management and staff of the firm is also not reachable either on telephone or in person.
7. Moreover, the construction of the project has stopped since May 2016. Post-dated cheques from January 2017 till date have not been paid by the firm and no communication has been received in this regard. Funds due on maturity after exercising buy back option i.e. after completion of 36 months are not paid by the firm. Also, TDS deducted for assured return for F/Y



2016-17 @10% has not been submitted to the income tax department.

## 8. RELEVANT ISSUES TO BE DECIDED

- I. Whether the respondent has cheated the complainant by booking the project and issuing an assured return cheque to Jogat Devi and Shakuntala, amounting to Rs.9,000 each and later cheated the complainant and has closed their office?
- II. Why the possession of the unit having super area of approx 250 sq. mt' in the said complex has not been delivered to the petitioners till date?
- III. Why the construction of the project has been stopped since May, 2016?

## 9. RELIEF SOUGHT

To direct the respondent to pay the petitioner the following amounts as per the MOU:

- I. Amount aid for 150 sq. ft' virtual space + 15,55,620.
- II. Assured return amount from January 17 to July 15 – 10,000/- per month i.e. 1,30,000.
- III. TDS not deposited to the IT department for FY 2016-17 – 18,000/-
- IV. 12% interest for 16 days for the month of July 17<sup>th</sup> i.e. 9,086/-



- V. 12% interest from August 17<sup>th</sup> to march 2018 – 1,36,920/- . Total amount being Rs.18,48,996/-
- VI. 11,06,172/- due to the petitioner as on March 31 2018 or to provide possession of the said unit having super area of 250 sq. ft’ in the said complex to the complainants and a compensation of 3,00,000/- for mental agony , harassmnet and loss suffered. Also, to award the costs.

**REPLY ON BEHALF OF THE RESPONDENT**

10. That the complainant despite repeated notices for payment of due instalments has not deposited the same thereby deliberately putting obstructions to the timely progression of the project.
11. That the complaint is not maintainable as the project is not registered with RERA due to pendency of renewal of Licence before Directorate of Town and Country Planning, Haryana. Moreover, the present complainants here are not “allottee”, but are “investors”, who are only seeking assured returns from respondents. As per the recent ruling of the MahaRERA, whosoever opts for “assured returns” through an MOU, such person is an investor and not the allottee and in the present case also, it is an admitted fact that complainants have booked the said virtual space with the sole motive of earning



profits. Therefore, in no probability the present complainants can be called as “allottee.

12. There is no cause of action with the complainants to seek the “assured return” as they are trying to seek advantage of the slowdown in the real estate sector. Also, the complainants have concealed material facts that they are property brokers/investors and have booked the property to gain profits. Article 2 of the MOU clearly states that the complainants have booked the present food court (virtual space) for the purpose of leasing it further for gaining advantage.
13. It is denied that respondents do not answer messages, calls of the complainants; respondents are always ready to answer. Also, the construction work has not been stopped and the details have been provided to the respondents.
14. That the respondents have hold the said assured return cheques due to demonetization and stopping of environment clearance work by the NGT which has affected the cash flow of money in the market.
15. It is also denied that MOU has any buy back option, which complainants have right to exercise after completion of 36 months. Also, it is denied that TDS for FY 2016-17 @10% has not been submitted to the IT department.



16. The builder buyer agreement cannot be signed as the respondents have not received the full and final payment from the complainants.

### DETERMINATION OF ISSUES

17. With respect to the **first issue**, in case of assured return schemes, the authority has no jurisdiction, as such the complainant is at liberty to approach the appropriate forum to seek remedy.
18. With respect to the **second issue**, no specific date for grant of possession has been placed on record, it is only an MoU which cannot be treated to be a contractual agreement between the parties. Therefore, the date of possession cannot be ascertained.
19. With respect to the **third issue**, the complainant has made assertion without supporting it with material particulars. As such this issue cannot be decided by the authority.

### FINDINGS OF THE AUTHORITY

20. The authority is of the view that a perusal of RERA Act, 2016 reveals that as per MoU, the assured return is not a formal clause with regard to giving or taking possession of unit for which, the buyer is not within the purview of RERA Act. Rather it is a civil matter.



21. Since RERA Act deals with the builder buyer relationship to the extent of timely delivery of possession to the buyer or deals with withdrawal from the project, as per provisions of section 18(1) of the Act.
22. The buyer is directed to pursue the matter with regard to getting assured return as per the MoU by filing a case before appropriate forum/adjudicating officer.

#### DECISION AND DIRECTIONS OF THE AUTHORITY

23. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent in the interest of justice and fair play:

- (i) A Memorandum of Understanding had been signed inter-se the parties on 23.8.2014. 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”.*

- (ii) 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 an MoU which cannot be treated to be a contractual agreement between the parties.
- (iii) 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.



(iv) 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 builder to complete the construction work within the time framed as per MoU and fulfill his committed liability.

24. The order is pronounced.

25. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.11.2018

HARERA  
GURUGRAM



Judgement uploaded on 05.01.2019