

**PROCEEDINGS OF THE DAY**

Day and Date	Tuesday and 27.11.2018
Complaint No.	169/2018 Case titled as Ms. Poonam Krishana Manuja Vs. M/s Venetian LDF Projects LLP & Ors
Complainant	Ms. Poonam Krishana Manuja
Represented through	Shri Shashi Kant Sharma, 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 8.10.2013. Vide Article 3 sub clause 3.1 of MoU which reads as under:-

***“Till 18 months from 4.9.2013, the developer shall pay to the allottee an assured return at the rate of Rs.46.70/- (Rupees Forty Six and paise Seventy only) per square feet of super area of premises per month and after payment of balance premium as per Scheduled -1 till the notice for offer of possession is issued, the developer shall pay to the allottee an Assured Return at the rate of 86.70 (Rupees Eight Six paise Seventy only) 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.66.66/- (Rupees Sixty Six and paise Sixty six only) per square feet of super area of premises per month (hereinafter referred to as the Assured return).***

***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. : 169 of 2018**  
**Date of First  
Hearing : 16.05.2018**  
**Date of Decision : 27.11.2018**

Ms. Poonam Krishna Manuja  
R/o Flat no. 61, Mausam Apartments, C-2,  
West Enclave, Pitampura, New Delhi-110034 **Complainant**

Versus

Venetian LDF Projects LLP & Ors.  
Office at: Unit no. 122-124, 1<sup>st</sup> floor, JMD  
Megapolis, Sohna Road, Sector 48, Gurugram,  
Haryana **Respondents**

**CORAM:**

Shri Samir Kumar **Member**  
Shri Subhash Chander Kush **Member**

**APPEARANCE:**

Shri Shashi Kant Sharma Advocate for the complainant  
Shri Avinash Kumar Legal Revenue Officer on behalf  
of the respondents



**ORDER**

1. A complaint dated 01.06.2018 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 Ms. Poonam Krishna Manuja, against the promoter M/s. Venetian LDF Projects LLP & Ors in respect of apartment/unit described below in the project '83 Avenue', on account of violation of the section 3 of the Act *ibid*.

2. Since, the buyer's agreement has been executed on 18.10.2014 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively, hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

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

1.	Name and location of the project	"83 Avenue", Sector-83, Village Sihi, Tehsil Mansesar, Gurugram
2.	Unit no.	Not mentioned
3.	Office space admeasuring	250 sq.ft



4.	Registered/ not registered	Not registered
5.	Nature of real estate project	Commercial
6.	Date of booking	<b>Cannot be ascertained</b>
7.	DTCP License no.	<b>12 of 2013</b>
8.	Date of Memorandum of Understanding	08.10.2013
9.	Total consideration amount as per Memorandum of Understanding dated 08.10.2013	Rs. 20,67,500/-
10.	Total amount paid by the complainant	Rs. 22,08,466 /-
11.	Date of delivery of possession from the date of execution of flat buyer agreement	<b>Cannot be ascertained because MOU doesn't provide for the possession clause</b>
12.	Delay for number of months/ years upto date 27.11.2018	<b>Cannot be ascertained because MOU doesn't provide for the possession clause</b>



4. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainant and the respondent. A memorandum of understanding dated 08.10.2013 is available on record for the

aforementioned office space. The promoter has not fulfilled his committed liability by not giving possession till date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The respondent appeared on 16.05.2018. The case came up for hearing on 16.05.2018, 05.07.2018, 09.08.2018, 25.09.2018, 25.10.2018 and 27.11.2018.

#### Facts of the complaint

6. Briefly stating the facts of the complaint, the complainant is an Indian citizen and the respondent no. 2 is Pvt. Ltd. company and respondent no. 1 is a limited liability partnership and is engaged in the business of real estate development. The respondent no. 3 to 5 are the partners of the respondent no. 1 who all are involved in daily affairs of the company.
7. Around June, 2013 authorized representative of respondents introduced to complainant the project namely "83 Avenue" in sector 83 Village Sihi, Tehsil Mansesar, distt Gurugram. The development of commercial space for a price of @ Rs. 8,270/- per sq.ft. approx.. Rs. 20,67,500/-.
8. The complainant along with her husband had visited the sales office of the respondent and discussed the details of the



project, wherein respondent said that they have secured all necessary approvals and permissions and are in the process of commencement of the construction soon. At the time of the discussions, it was agreed upon that if complainant paid 50% of the total value then complainant will get assured return @ Rs. 11,675/- per month.

9. At the time of booking the office space a memorandum of understanding was executed between respondents and complainants on 08.10.2013. At the time of execution of memorandum of understanding it was assured that a sum of Rs. 11,675/- inclusive of TDS would be paid by the respondents to complainant as assured return for 18 months. After completion of 18 months, remaining 50% was to be paid by the by the complainant to the respondent. Thereafter, the complainant will get Rs. 21,675/- per month as assured return inclusive of TDS. The complainant paid a total sum of Rs. 22,08,466/- inclusive of service tax.



10. On 06.02.2017 the respondents sent an email wherein respondents instructed the complainant not to deposit the post dated cheques due to recent government action on demonetization. In above cited instructions of respondents, indicated that respondents will inform to complainant as soon

as respondents get the payments flow but after waiting for along period there was no further instructions from the respondents side.

11. The respondent informed and assured the complainant that the respondents will repay the amount of dishonoured cheques shortly.

12. The complainant visited the project and saw that there is no development on the project site and it was evident to the complainant that from the date of booking till today respondents are cheating the complainant in order to grab the precious amount of the complainant.

13. The complainant sent a legal notice through his counsel Shashi Kant Sharma on 19.07.2017 for refund the amount of Rs. 22,08,466/- along with 18% interest from the booking or handing over the possession within a period of 15 days.

14. The complainant filed a complaint before the permanent Lok Adalat Gurugram and the same has been dismissed a withdrawn on 22.08.2018.

15. The respondent submitted that in clause 23 of the application for booking clearly states that in case of delay in the project





or in the case the respondents are forced to abandon the project, the refund will be without any interest.

#### 16. Issues raised by the complainant

- I. Whether the complainant made all payments in time?
- II. Whether the promoter/respondent handed over the possession of the office space to the complainant in duly time period in terms of the MOU?
- III. Whether the promoters/respondent has completed the entire project?
- IV. Whether promoters/respondents paid assured return regularly?

#### 17. Relief sought

- I. Direct the respondent for immediate 100% refund of the total amount Rs. 22,08,466/-/- paid by the complainant, along with a penal interest of 18% per annum from the date of the receipt of the payments made to the opposite party.
- II. Direct the respondent to pay balance assured return of Rs. 19,507/- per month from February 2017 to till decision of the complainant.



**III. Direct the respondent(s) to pay compensation of Rs. 5,00,000 to the complainant for mental agony, harassment, discomfort and undue hardships caused to the complainant as a result of the above acts and omissions on the part of the opposite party(s).**

### **Respondent's reply**

18. The respondent submitted preliminary objections upon the maintainability of the complaint. The respondent stated that the present complaint is not maintainable in law or facts and the hon'ble regulatory authority has no jurisdiction whatsoever to entertain the present complaint. The complaint is also not maintainable in as much as within the territorial jurisdiction of the authority as submitted by the respondent.

19. The respondent submitted that the complainant has no cause of action at all to seek any compensation and refunds along with interest from the respondent. The complaint is not maintainable as the same is without such as broker's commission, earnest money, govt. taxes, administrative expenses, etc. the complainant has raised certain issue with ulterior motive of seeking total refunds with interest. As per



the respondent, the complainant seeks to exploit the situation of slowdown of real estate sector in her own favour.

20. It was submitted by the respondent that the complainant never applied for refunds of her invested amount. The bookings and agreements between the parties cannot be terminated through legal notice and further the legal notice has never been received by the respondent. Being an allottee of an office/shop space, an immovable property and in order to remove the lien over the property the complainant has to surrender all the original receipts, original allotment letter, NOC from banks if there is bank loan and certain other formalities.

21. The respondent submitted that the complainant has concealed material facts from the authority and the complainant has not disclosed the fact that she being property investor, has booked the unit for higher returns and the transaction as such is for commercial purpose. The property rates have gone down substantially and there is a slow down in the real estate sector, in order to take advantage of the situation the complainant has filed the complaint.

22. The respondent submitted that the complainant was required to submit proper application surrendering all the original



receipts and an affidavit cum undertaking along with an indemnity bond stating therein that the unit has been booked by him and no the person is entitled to claim refunds against the unit and in case if any respondents suffers any loss due to valid claim of any other person against his booking, the allottee shall indemnify the respondents.

23. It was submitted by the respondent that the shop/office unit booked by the complainant, there has been a lien created upon the said unit and the lien of the complainant cannot be removed by just asking for it or through any legal notice or email. The respondent raised that the construction of the project is almost 50% complete. The respondent asserted that it is totally unreasonable and unlawful on the part of the complainant to seek refunds along with interest on the invested amount for its own lapse. In case for ready possession unit, the token money gets forfeited if the buyer seeks to withdraw from its commitment.



### **Findings of the authority**

24. The authority is of the view that memorandum of understanding had been signed inter-se-parties on 08.10.2013. The complainant entered into an assured return scheme plus a plan for a prospective owning of the area (not specified in

MOU). No specific date of 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.

25. As already decided by the authority in complaint no. 141 of 2018 titled as **Brhimjeet Vs. M/s Landmark Apartments Pvt. Ltd.** no case is made out by the complainant. The counsel for respondent has placed on record a Supreme Court Judgement dated 25.07.1997 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.

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

26. The authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions to the respondent:

- (i) The authority is of the view that the authority has no jurisdiction, as such the complainant is at liberty to approach the appropriate forum to seek remedy.
- (ii) However, at the instance of the complainant, direction is issued to the builder to complete the construction



work within the time framed as per MOU and to fulfil his committed liability.

27. The complaint is disposed of accordingly.

28. The order is pronounced.

29. Case file be consigned to the registry. Copy of this order be endorsed to the registration branch.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Date: 27.11.2018

Judgement Uploaded on 09.01.2019

HARERA  
GURUGRAM

