

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 27.11.2018
Complaint No.	174/2018 Case titled as Deep Chand & Ors. Vs M/s Venetian LDF Projects LLP & Ors
Complainant	Deep Chand & 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 15.7.2014. 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 10th 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. : 174 of 2018
Date of first hearing : 24.05.2018
Date of decision : 27.11.2018

Sri. Deep Chand
R/o Shikohpur, Tehsil Manesar
Gurugram
Smt. Bimla Devi
R/O Shikohpur, Tehsil Manesar
Gurugram

...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, 2nd 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:

Shri Rajesh Yadav/Ms. Neeta Sinha Advocate for the complainants
Shri Avnish Kumar Legal Revenue Officer on behalf of Respondents

Respondent no. 2 and 3 both proceeded ex-parte

ORDER

1. A complaint dated 19.04.2018 was filed under section 31 of the Real Estate (Regulation And Development) Act, 2016 read with with rule 28 of the Haryana Real Estate (Regulation And Development) Rules, 2017 by the complainants Sri. Deep Chand and Smt. Bimla Devi 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 3.1 of MOU executed on 15.07.2014 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: -

DTCP licence no. 12 of 2013

Nature of project: commercial colony

1.	Name and location of the Project	" 83 Avenue" Sector 83, Village Sihi, Tehsil Manesar, Gurugram
2.	Registered / Not Registered	Not Registered
3.	Unit/ Villa No.	Food court (virtual space)
4.	Unit measuring	250 Sq. Ft. (approx.)
5.	Date of Execution of MOU	15.07.2014
6.	Assured Return	Rs. 80 per sq.ft. per month of super area
7.	Amount paid by the complainant till date	Rs.15,55,620/-
8.	Basic sale price	Rs.15,00,000/-
9.	Percentage of amount paid	More than 100%
10.	Date of delivery of possession.	Cannot be ascertained
11.	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 15.07.2014.

4. Taking cognizance of the complaint, the authority issued notice to the respondent to appear before the authority and to file the reply. The respondent appeared on 05.07.2018. Reply was filed by respondent no. 1 and 4. 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.

Facts of the case

5. That 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 July 15.07.2014 after which the respondents issued cheques of assured return.
6. The complainant submitted that after receiving information for holding of assured return cheques in the name of Deep Chand and Bimla Devi 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. The complainant submitted that moreover, the construction of the project is stopped since May 2016. Post-dated cheques from January 2017 till date have not been paid by the firm and no conversation is 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. Also, the builder buyer agreement has not been given by the firm till date.

8. Issues to be decided

- i. Whether the complainants are entitled to 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?

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 17th i.e. 9,086/-
- v. 12% interest from August 17th 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

- vii. 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, harassmt and loss suffered. Also, to award the costs.



Reply on behalf of respondents no. 1 and 4

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 the messages and calls of the complainants and respondent 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.

Findings of the authority

17. A Memorandum of Understanding has been signed inter-se the parties on 15.7.2014. 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 10th of every English Calendar Month on due basis”.

18. The 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.
19. 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.
20. 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.



Decision and directions of the authority

21. 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 direction to the respondent in the interest of justice and fair play:

- i. 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 fulfil his committed liability

22. The order is pronounced.

23. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Date: 27.11.2018

HARERA
GURUGRAM



Judgement Uploaded on 08.01.2019