

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

Complaint no. : 403 of 2018
First date of hearing : 2.8.2018
Date of decision : 10.1.2019

1. Mr. Satbir Singh,
R/o: VPO Shikohpur, Tehsil Manesar,
District Gurugram.
2. Mrs. Kamlesh Devi
R/o: H.no. 459, VPO Shikohpur, Tehsil
Manesar, District Gurugram.

...Complainants

Versus

1. Venetian LDF Projects LLP
Regd. Office: 205, Time Centre, 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 Director
R/o: 541, Sector-9, Gurugram,
Haryana-122001
4. Yogesh Kandhari 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:

Ms. Neeta Singh
None for the respondent

Advocate for the complainants
Advocate for the respondent

ORDER

1. A complaint dated 7.6.2018 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. Satbir Singh and Mrs. Kamlesh Devi, against Venetian LDF Projects LLP, Vivek Seth, Vijesh Goel and Yogesh Kandhari Puri in respect of apartment/unit described below in the project "83 Avenue", on account of violation of the section 11(4)(a) of the Act *ibid*.
2. The complaint was filed on 7.6.2018. Notices w. r. t. hearing of the case were issued to the respondent on 6.7.2018 21.8.2018, and 26.10.2018 for making his appearance. However despite due and proper service of notices, the respondent did not come before the authority despite giving him due opportunities as stated above. From the conduct of the respondent it appears that he does not want to pursue the matter before the authority by way of making his personal appearance adducing and producing any material particulars in the matter. As such the authority has no option but to declare the proceedings *ex-parte* and decide the matter on merits by taking into account legal/factual propositions as raised by the complainant in his complaint



3. Since, the MoU has been executed on 14.7.2014 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be 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.
4. The particulars of the complaint are as under: -

- **Nature of the project- Commercial project.**
- **DTCP license no.- 12 of 2013 dated 15.3.2013**

1.	Name and location of the Project	'83 Avenue' project, Sector 83, Village Sihi, Tehsil Manesar, Distt 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 ABA	Not executed
6.	Date of execution of MoU	14.7.2014
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 delivery of possession.	Not delivered
11.	Type of plan	Construction linked plan
12.	Delay of number of months/ years	Cannot be ascertained



5. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondent.
6. Taking cognizance of the complaint, the authority issued notice to the respondent dated 6.7.2018, 21.8.2018 and 26.10.2018 for filing reply and for appearance. Despite service of notice, neither the respondent has appeared nor has filed their reply to the complaint, therefore their right to file reply has been struck off and case is being proceeded ex-parte against the respondent.

Facts of the complaint

7. The complainant booked a commercial colony named Avenue 83 in sector-83 and agreed for purchase of food court on 2nd floor having super area of 250 sq. ft' with assured return @80/- per sq. ft' of super area of premises per month till tenant is inducted possession and executed MoU on 14.7.2014 and thereafter the respondent issued cheques of assured return.
8. After receiving information for holding of assured return cheques no.236752, 2367500, 236766, 236751, 236765, 236764, 236763 and 236762 in favour of Mr. Satbir and Mrs.



Kamlesh Devi, no official correspondence is being received from the firm. The office situated at JMD Megapolis is closed since November, 2017.

9. The management and staff of the firm is not reachable either on telephone or in person. Construction of the project is stopped since May, 2016 status quo is maintained till date. Post dated cheques from January 2017 till date are not paid by the firm and nil conversation is received in this regard.
10. Funds due on maturity after exercising buy back option i.e. after completion of 36 months is not paid by the firm. TDS deducted for assured return for FY 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.
11. **Issues raised by the complainants are as follow:**
 - i. Whether the respondent has cheated the complainants by booking the project, issuing assured return cheques of Rs.9,000 each and later closing their office?
 - ii. Whether TDS @10% deducted by firm against assured return was deposited to the IT department as it was paid by the petitioner while filing IT return for FY 2016-17?



- iii. Whether the possession of the unit has been delivered to the complainants till date?
- iv. Whether the construction of the project has been stopped since May, 2016?

12. Relief sought by the complainants

- i. The complainants are seeking refund of Rs.15,55,620/- already paid by them.
- ii. To direct the respondent to pay assured return from January 17 to July 15 each month @10,000/- amounting to Rs.1,30,000.
- iii. To direct the respondent to deposit TDS to IT department for FY 2016-2017 amounting to Rs.18,48,996/-.
- iv. Alternatively, provide possession of the unit having super area of approx 250 sq. ft'.
- v. To direct the respondent to pay compensation of Rs.3,00,000/- to the complainant for mental agony, harassment and losses suffered as per section 18 read with section 19 of RERA Act.
- vi. To award costs.



Determination of issues

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:

13. 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.
14. With respect to the **second issue**, this authority is not the right forum and the complainant is directed to approach the appropriate authority i.e. IT department.
15. With respect to the **third 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.
16. With respect to the **fourth 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

17. As the respondents have not provided builder buyer agreement and have mischievously drafted the MOU which



does not provide the date of possession. The authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016.

18. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.
19. The complainants requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions and fulfil obligation.
20. In the present complaint, the complainants are seeking refund of the entire money paid till date i.e. 15,55,620/- along with interest @ 10.75% p.a. from the date of depositing money till the date of refund of the same.
21. However, keeping in view the present status of the project and intervening circumstances, the authority is of the view that the builder shall complete the construction work within time as per MoU and fulfil his committed liability.



DECISION AND DIRECTIONS OF THE AUTHORITY

22. 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) Since the project is not registered, as such notice under section 59 of the Real Estate (Regulation and Development) Act, 2016 for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.
- (ii) Complaint was filed on 7.6.2018. Notices w.r.t reply to the complaint were issued to the respondent on 6.7.2018, 21.8.2018, 26.10.2018, 30.10.2018 and 15.11.2018. besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 30.10.2018 and on 15.11.2018 for non-filing of reply even after service of notice. However, despite due and proper service of notices, the respondent neither filed the reply nor was present before the authority. From the above stated conduct of the respondent, it appears that respondent does not want to pursue the matter before the authority by way of making personal appearance by adducing and producing any material particulars in the matter. As such, the authority has no option but to declare the proceedings ex-parte



and to decide the matter on merits by taking into account legal/factual propositions as raised by the complainant in his complaint.

(iii) A final notice date 31.12.2018 by way of email was sent to both the parties to appear before the authority on 10.1.2019.

(iv) This is a case of assured return, MoU between the parties were executed on 14.7.2014 and July, 2010 for allotment of commercial unit admeasuring 250 sq. ft' in 83 Avenue project, Sector 83, Manesar, Gurugram and as per assured return clause the respondent committed to pay Rs.9,000/- per month. Complainant has so far made a payment of Rs.15,55,620/- to the respondent and the respondent has only issued seven cheques to the complainant which couldn't be encashed for reasons known to the respondent. Thereafter, the office of the respondent was found to be closed. Thus, the respondent neither paid any assured return to the complainant nor the possession of the booked unit has been handed over to the complainant till date.

(v) Considering all the facts and circumstances of the matter and taking into account the provisions of MoU



executed inter se the parties, the authority is of the considered opinion that complainant has invested money in commercial space to gain profit and no exact date of delivery of booked unit has been mentioned in the MoU. Complaint does not lie before this authority and the same stands dismissed with liberty to the complainant to pursue the matter in the appropriate forum, if he so desired.

23. Complaint is disposed of accordingly.
24. Detailed order will follow. File be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.1.2019

Judgement uploaded on 29.01.2019

