BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 3810 of 2020
Date of filing complaint: 30.10.2021
First date of hearing : 22.12.2020
Date of decision : 10.11.2021

1. 2.	Shyam Swaroop Gupta Mrs. Mitlesh Gupta **Both RR/o**: H.no: 1262, Near Ajanta Public School, Sector 31	**Complainants**
	Versus	
	M/s Vatika Limited R/o Vatika Triangle, 5th Floor, Sushant Lok Ph-1, block A, Mehrauli-Gurgaon road, Gurugram-122002(HR).	**Respondent**

CORAM:	
Dr. K.K. Khandelwal	**Chairman**
Shri Vijay Kumar Goyal	**Member**
APPEARANCE:	
Sh. Manish Yadav (Advocate)	Complainants
Sh. Venket Rao (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter-alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of

the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Name and location of the project	Vatika INXT City Centre
2.	Nature of the project	Commercial complex
3.	Area of the project	10.48 acres
4.	DTCP license	258 of 2007
	License validity/ renewal period	18.11.2019
5.	RERA registered/not registered	**Not registered**
6.	Unit no.	488, 4th floor, tower A (Page no 23 of complaint),
7.	Unit measuring	750 sq. ft.
8.	New unit allotted	243, block C (page 40 of complaint)
9.	Date of execution of apartment buyer's agreement	02.09.2011 Date is not mentioned so taken from stamp duty mention on builder buyer agreement which is duly executed by both the parties. (Page 20 of complaint)

10.	Total consideration	Rs. 36,56,250/- as per clause 1 of BBA (page 23 of complaint)
11.	Total amount paid by the complainants	Rs. 36,56,250/- as per clause 2 of BBA (page 23 of complaint)
12.	Due date of delivery of possession	25.08.2014 as per clause 2 of the builder buyer agreement (page 23 of complaint)
13.	Provision regarding assured return	**Addendum to the agreement dated 11.08.2011** This addendum forms an integral part of builder buyer agreement dated 11.08.2011. a. Till offer of possession: 71.50/- per sq.ft. b. After completion of the building: 65/- per sq.ft. You would be paid an assured return w.e.f. 11.08.2011 on a monthly basis before the 15th of each calendar month.
14.	Offer of possession	Not offered
15.	Occupation certificate	Not obtained
16.	Delay in handing over possession till date of decision i.e., 10.11.2021	7 years 2 months 16 days

B. Facts of the complaints

3. The complainants have submitted that they jointly paid a total amount of Rs 37,50,398/- on 19.08.2011 towards the booking of the commercial unit with the respondent in its project "Vatika INXT City Centre" located at village Sikhopur, Tehsil and District Gurgaon, Haryana. They got an allotment on 25.08.2011 in which a unit bearing unit no. 488, fourth floor, block C admeasuring 750 sq.ft. was allotted (later it was changed to unit no. 243) to them in equal share, and they got a letter for the same is annexed herewith as annexure C-2. They also got an addendum to the agreement

dated 25.08.2011 in which they will receive commitment charges as monthly rent of Rs 71.50/- per sq.ft. per month till the offer of possession and Rs 65.50/- per sq.ft. after the completion of the building and the said addendum to the agreement is also annexed as annexure C-3.

4. The complainants paid an amount of Rs. 37,50,398/- towards the unit/flat including service tax. As per builder buyer's agreement dated 02.09.2011 the construction of the said complex was to be raised within three years from the date of execution of the builder buyer's agreement builder buyer's agreement is attached as annexure C-4.

5. That the complainants have paid a huge sum of Rs. 37,50,398/- which is the total payment of the unit. The complainants visited at the site many times and found that construction work has not been completed as promised by the respondent. At the time of signing the apartment buyers agreement it was clearly told to the complainants that the possession of the unit should be handed over within three years from the date of signing the builder buyer's agreement and the respondent had given the possession after the passing of nearly 4 years. The complainants had purchased the said unit in a believe that after the passage of 3 years after the booking, they would be able to become an owner of a commercial space but unfortunately all their plans got shattered as the construction of the said project got delayed even after making such a big investment. The delay in possession is totally unethical and shall be considered as an unfair business practice and now it is evident from the facts stated above that the respondent was only after the customer's

money without any intension to complete the project in time as promised.

6. That the complainants being aggrieved by the illegal and unlawful acts of the respondent wants their due amount to be returned with compensation as the complainants not only suffered mentally, physically but has gone through a huge monetary loss only due to the respondent. The complainants got letter from the respondent regarding the completion of construction of the project, nearly four years delay, and it was clearly mentioned in it that as the building got operational in the third week of February 2018, the commitment charges payable shall be revised to Rs 65/- per sq.ft. per month from 1st March 2013, the copy of the same is annexed herewith as annexure C 5.

7. That there is strong likelihood that the respondent wants to cheat the complainants, the respondent cannot be allowed to act despotically and arbitrarily taking advantage of its monopoly. The complainants are left with no alternatives, but to knock the doors of this hon'ble authority for redressal of this grievances.

8. The respondent builder arbitrarily not completed the said project as per the agreement, it is pertinent to mention that the respondent builder from day one of the booking in their project cheated the complainants through his arbitrary conduct into every fake deal and is trying to grab the hard-earned money of the complainants. The respondent paid commitment charges from October 2011 to June 2018 but unfortunately later on from July 2018 the respondent mischievously stopped paying the commitment charges as promised from dated 01.07.2018 till date.

9. The complainants received a mail dated 06.07.2018 from the respondent informing that unit has been leased out. Since the project of the respondent builder is failed and the respondent is not paying the commitment charges as promised till today, despite that the respondent builder collected the money from the complainants from the said project and thereby, the respondent builder had made wrongful loss to complainants and wrongful gain to himself.

10. That the complainants have requested many time to respondent to pay the due amount which they kept itself illegally and arbitrarily and with intention to make wrong full loss to complainants and gain to himself. The complainants being aggrieved by the illegal and unlawful acts of the respondent, sent a request vide letter dated 22.11.2019 and e-mail on the same day requesting to pay the commitment charges payable against their unit. The complainants again sent reminders vide emails dated 25.11.2019 to the respondent regarding the payment against his unit but was of no use.

C. Relief sought by the complainants:

11. The complainants have sought following relief(s):

    i. Direct the respondent to pay the outstanding amount as is due and payable by the respondent to the complainants from 01.07.2018 till date.

D. Reply by the respondent

12. That the present complaint is an abuse of the process of this hon'ble authority and is not maintainable. The complainants are trying to supress material facts relevant to the matter. The complainants are

making false, misleading, frivolous, baseless, unsubstantiated allegations against the respondent with malicious intent and sole purpose of extracting unlawful gains from the respondent.

13. That the complaint filed by the complainants before the ld. authority besides being misconceived and erroneous, is untenable in the eyes if law and liable to be rejected. The complainants have misdirected them self in filing the above captioned complaint before this ld. authority as the reliefs being claimed by the complainants cannot be said to even fall within the realm of jurisdiction of this ld. authority.

14. It would be pertinent to make reference to some of the provisions of the Real Estate (Regulation and Development) Act 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017 made by the government of Haryana in exercise of powers conferred by sub-section 1 read with sub-section 2 of section 84 of 2016 Act. Section 31 of 2016 Act provides for filing the complainants with this ld. authority or the adjudicating officer.

Sub-section (1) thereof provides that any aggrieved person may file a complaint with the authority or the adjudicating officer, as the case may b, for any violation or contravention of the provisions of 2016 Act or the rules and regulations made there under against any promoter, allottee or real estate agent, as the case may be.

Sub-section (2) provides that the form, manner and fees for filing complainant under sub-section (1) shall be such as may be prescribed.

Rule 28 of 2017 rules provides for filing of complaint with this ld. authority, in reference to section 31 of 2016 Act. Sub-clause(1) inter alia, provides that any aggrieved person may file a complaint with

the authority for any violation of the provision of 2016 Act or the rule and regulations made there under, save as those proved to be adjudication officer, in form 'CRA'

Significantly, reference to the authority, which is this ld. authority in the present case and before the "Adjudication officer" is separate and distinct.

"Adjudicating officer" has been defined under section 2(a) to mean the adjudication officer appointed under sub-section (1) of the section 71, whereas the "Authority" has been defined under section 2(i) to mean the Real Estate Regulatory Authority, established under sub-section(1) of section 20. Apparently under section 71 the adjudicating officer shall be appointed by the authority in consultation with the appropriate government for the purpose of adjudging compensation under sections 12, 14, 18 and section 19 of the 2016 Act and for holding an enquiry in the prescribed manner.

A reference may also be made to section 72, which provides for factors to be deliberated and taken into account by the adjudicating officer while adjudging officer while adjudging the quantum of compensation and interest, as the case may be, under section 71 of 2016 Act. It would be pertinent to make reference to section 18 of 2016 Act, which inter-alia, provides for return of amount and compensation.

From the conjoint reading of the aforementioned provisions, it is crystal clear and evident that the claim for compensation towards said unit with would be only adjudged by the adjudicating officer as appointed under section 71 of 2016 Act and that too keeping in view the factors mentioned in section 72 of 2016 Act. No complaint can be entertained much less before this ld. authority in respect of

the matters to be adjudicated by the adjudicating officer. Hence, the ld. authority lacks jurisdiction to deal with the present complaint. Apparently, in the present case, the complainants are seeking a claim for compensation which from reading of the provision 2016 Act and 2017 rules, especially those mentioned hereinabove, would be liable for adjudication after due deliberation, if at all, by the adjudicating officer and not by this ld. authority. That on this ground alone, the complaint is liable to be rejected.

15. That the various contentions and claims as raised by the complainant are fictious, baseless, vague, wrong and created to misrepresent and mislead this hon'ble authority, for the reasons stated above. That it is further submitted that none of the reliefs as prayed for by the complainants are sustainable before this hon'ble authority and in the eyes of law. Hence, the complainant is liable to be dismissed with imposition of exemplary cost for wasting the precious time and resources of the hon'ble authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.

19. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

28. The respondent have raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. The authority observes that it has territorial as well as subject matter

jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject-matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

> ***Section 11(4)(a)***
>
> *Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*
>
> *The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.*
>
> ***Section 34-Functions of the Authority:***
>
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-

compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the relief sought by the complainants:

F.I. Assured returns

20. While filing the claim petition besides delayed possession charges of the allotted unit as per builder buyer agreement dated 02.09.2011, the claimant has also sought assured returns on monthly basis as per addendum to the agreement dated 25.08.2011 at the rate of Rs 71.50/- per sq. ft. of super area per month till the construction of the said commercial unit is complete. It is pleaded by the claimant that the respondents have not complied with the terms and conditions of the agreement. Though for some time the amount of assured returns was paid but later on, the respondents refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019 (herein after referred to as the Act of 2019). But that Act does not create a bar for payment of assured returns even after coming into operation and the payments made in this regard are protected as per section 2(4)(iii) of the above-mentioned Act. However, the plea of respondents is otherwise and who took a stand that though they paid the amount of assured return upto the year 2018 but did not pay assured return amount after coming into force of the Act of 2019 as the same was declared illegal.

21. The addendum to the agreement dated 11.08.2011 is a document which was executed between both the parties on 11.08.2011 and can be termed as agreement. The Act of 2016 defines "agreement for sale" means an agreement entered into between the promoter and the allottee [Section 2(c)]. An agreement for sale is defined as an arrangement entered between the promoter and allottee with freewill and consent of both the parties. An agreement defines the rights and liabilities of both the parties i.e., promoter and the allottee and marks the start of new contractual relationship between them. This contractual relationship gives rise to future agreements and transactions between them. Therefore, different kinds of payment plans were in vogue and legal within the meaning of the agreement for sale. One of the integral parts of this agreement is the transaction of assured return inter-se parties. The "agreement for sale" after coming into force of this Act (i.e., Act of 2016) shall be in the prescribed form as per rules but this Act of 2016 does not rewrite the "agreement" entered between promoter and allottee prior to coming into force of the Act as held by the Hon'ble Bombay High Court in case ***Neelkamal Realtors Suburban Private Limited and Anr. v/s Union of India & Ors.,*** (Writ Petition No. 2737 of 2017) decided on 06.12.2017. Since the agreement defines the buyer-promoter relationship therefore, it can be said that the agreement for assured return between the promoter and allottee arises out of the same relationship. Therefore, it can be said

that the real estate authority has complete jurisdiction to deal with assured return cases as the contractual relationship arise out of agreement for sale only and between the same parties as per the provisions of section 11(4)(a) of the Act of 2016 which provides that the promoter would be responsible for all the obligations under the Act as per the agreement for sale till the execution of conveyance deed of the unit in favour of the allottees. Now, two issues arise for consideration as to:

i. Whether authority is within the jurisdiction to vary its earlier stand regarding assured return due to changed facts and circumstances.

ii. Whether the authority is competent to allow assured returns to the allottees in pre-RERA cases, after the Act of 2016 came into operation,

iii. Whether the Act of 2019 bars payment of assured returns to the allottees in pre-RERA cases

22. While taking up the cases of ***Brhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd. (complaint no 141 of 2018)***, and ***Sh. Bharam Singh & Anr. Vs. Venetain LDF Projects LLP"*** (complaint no 175 of 2018) decided on 07.08.2018 and 27.11.2018 respectively, it was held by the authority that it has no jurisdiction to deal with cases of assured returns. Though in those cases, the issue of assured returns was involved to be paid by the builder to an allottee but at that time, neither the full facts were brought before the authority nor it was argued on behalf of the allottees that on the basis of contractual obligations, the builder is obligated to

pay that amount. However, there is no bar to take a different view from the earlier one if new facts and law have been brought before an adjudicating authority or the court. There is a doctrine of ***"prospective overruling"*** and which provides that the law declared by the court applies to the cases arising in future only and its applicability to the cases which have attained finality is saved because the repeal would otherwise work hardship to those who had trusted to its existence. A reference in this regard can be made to the case of ***Sarwan Kumar & Anr Vs. Madan Lal Aggarwal*** Appeal (civil) 1058 of 2003 decided on 06.02.2003 and wherein the hon'ble apex court observed as mentioned above. So, now a plea raised with regard to maintainability of the complaint in the face of earlier orders of the authority in not tenable. The authority can take different view from the earlier one on the basis of new facts and law and the pronouncements made by the apex court of the land. It is now well settled preposition of law that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum , memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured returns. Moreover, an agreement defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allotee arises out of the same relationship and is marked by the original agreement for sale. Therefore, it can be said that the authority has complete jurisdiction with assured returns cases as the contractual relationship arise out of the agreement for sale only and between

the parties. In the case in hand, the issue of assured returns is on the basis of contractual obligations arising between the parties. In cases of ***Anil Mahindroo & Anr. v/s Earth Iconic Infrastructure Pvt. Ltd.*** (Company Appeal (AT) (Insolvency) No. 74 of 2017) and ***Nikhil Mehta and Sons (HUF) and Ors. vs. AMR Infrastructure Ltd.*** (CA NO. 811 (PB)/2018 in (IB)-02(PB)/2017) decided on 02.08.2017 and 29.09.2018 respectively, it was held that the allottees are investors and have chosen committed return plans. The builder in turn agreed to pay monthly committed return to the investors. Thus, the amount due to the allottee comes within the meaning of 'debt' defined in Section 3(11) of the I&B Code. Then in case of ***Pioneer Urban Land and Infrastructure Limited & Anr. v/s Union of India & Ors.*** (Writ Petition (Civil) No. 43 of 2019) decided on 09.08.2019, it was observed by the Hon'ble Apex Court of the land that *"...allottees who had entered into "assured return/committed returns' agreements with these developers, whereby, upon payment of a substantial portion of the total sale consideration upfront at the time of execution of agreement, the developer undertook to pay a certain amount to allottees on a monthly basis from the date of execution of agreement till the date of handing over of possession to the allottees"*. It was further held that 'amounts raised by developers under assured return schemes had the "commercial effect of a borrowing' which became clear from the developer's annual returns in which the amount raised was shown as "commitment charges" under the head "financial costs". As a result, such allottees were held to be "financial creditors" within the meaning of section 5(7) of the Code." including its treatment in books of accounts of the promoter and for the purposes of income

tax. Then, in the latest pronouncement on this aspect in case ***Jaypee Kensington Boulevard Apartments Welfare Association and Ors. vs. NBCC (India) Ltd. and Ors.*** (24.03.2021-SC): MANU/ SC/0206 /2021, the same view was followed as taken earlier in the case of ***Pioneer Urban Land Infrastructure Ld & Anr.*** with regard to the allottees of assured returns to be financial creditors within the meaning of section 5(7) of the Code. Then after coming into force the Act of 2016 w.e.f 01.05.2017, the builder is obligated to register the project with the authority being an ongoing project as per proviso to section 3(1) of the Act of 2017 read with rule 2(o) of the Rules, 2017. The Act of 2016 has no provision for re-writing of contractual obligations between the parties as held by the Hon'ble Bombay High Court in case ***Neelkamal Realtors Suburban Private Limited and Anr. v/s Union of India & Ors.,*** (supra) as quoted earlier. So, the respondent/builder can't take a plea that there was no contractual obligation to pay the amount of assured returns to the allottee after the Act of 2016 came into force or that a new agreement is being executed with regard to that fact. When there is an obligation of the promoter against an allottee to pay the amount of assured returns, then he can't wriggle out from that situation by taking a plea of the enforcement of Act of 2016, BUDS Act 2019 or any other law.

23. It is pleaded on behalf of respondent/builder that after the Act of 2019 came into force, there is bar for payment of assured returns to an allottee. But again, the plea taken in this regard is devoid of merit. Section 2(4) of the above mentioned Act defines the word ' deposit' as *an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to*

return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, *with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include*

i. *an amount received in the course of, or for the purpose of, business and bearing a genuine connection to such business including—*
ii. *advance received in connection with consideration of an immovable property under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement.*

24. A perusal of the above-mentioned definition of the term 'deposit' shows that it has been given the same meaning as assigned to it under the Companies Act, 2013 and the same provides under section 2(31) includes any receipt by way of deposit or loan or in any other form by a company but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India. Similarly rule 2(c) of the Companies (Acceptance of Deposits) Rules, 2014 defines the meaning of deposit which includes any receipt of money by way of deposit or loan or in any other form by a company but does not include.

i. *as a advance, accounted for in any manner whatsoever, received in connection with consideration for an immovable property*
ii. *as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;*

25. So, keeping in view the above-mentioned provisions of the Act of 2019 and the Companies Act 2013, it is to be seen as to whether an allottee is entitled to assured returns in a case where he has

deposited substantial amount of sale consideration against the allotment of a unit with the builder at the time of booking or immediately thereafter and as agreed upon between them.

26. The Government of India enacted the Banning of Unregulated Deposit Schemes Act, 2019 to provide for a comprehensive mechanism to ban the unregulated deposit schemes, other than deposits taken in the ordinary course of business and to protect the interest of depositors and for matters connected therewith or incidental thereto as defined in section 2 (4) of the BUDS Act 2019 mentioned above.

27. It is evident from the perusal of section 2(4)(l)(ii) of the above-mentioned Act that the advances received in connection with consideration of an immovable property under an agreement or arrangement subject to the condition that such advances are adjusted against such immovable property as specified in terms of the agreement or arrangement do not fall within the term of deposit, which have been banned by the Act of 2019.

28. Moreover, the developer is also bound by promissory estoppel. As per this doctrine, the view is that if any person has made a promise and the promisee has acted on such promise and altered his position, then the person/promisor is bound to comply with his or her promise. When the builders failed to honour their commitments, a number of cases were filed by the creditors at different forums such *as* ***Nikhil Mehta, Pioneer Urban Land and Infrastructure*** which ultimately led the central government to enact the Banning of Unregulated Deposit Scheme Act, 2019 on 31.07.2019 in pursuant to the Banning of Unregulated Deposit Scheme Ordinance, 2018. However, the moot question to be

decided is as to whether the schemes floated earlier by the builders and promising as assured returns on the basis of allotment of units are covered by the abovementioned Act or not. A similar issue for consideration arose before Hon'ble RERA Panchkula in case ***Baldev Gautam VS Rise Projects Private Limited*** (*RERA-PKL-2068-2019*) where in it was held on 11.03.2020 that a builder is liable to pay monthly assured returns to the complainants till possession of respective apartments stands handed over and there is no illegality in this regard.

29. The definition of term 'deposit' as given in the BUDS Act 2019, has the same meaning as assigned to it under the Companies Act 2013, as per section 2(4)(iv)(i) i.e, explanation to sub-clause (iv). In pursuant to powers conferred by clause 31 of section 2, section 73 and 76 read with sub-section 1 and 2 of section 469 of the Companies Act 2013, the Rules with regard to acceptance of deposits by the companies were framed in the year 2014 and the same came into force on 01.04.2014. The definition of deposit has been given under section 2 (c) of the above-mentioned Rules and as per clause xii (b), as advance, accounted for in any manner whatsoever received in connection with consideration for an immovable property under an agreement or arrangement, provided such advance is adjusted against such property in accordance with the terms of agreement or arrangement shall not be a deposit. Though there is proviso to this provision as well as to the amounts received under heading 'a' and 'd' and the amount becoming refundable with or without interest due to the reasons that the company accepting the money does not have necessary permission or approval whenever required to deal in the goods or

properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under these rules however, the same are not applicable in the case in hand. Though it is contended that there is no necessary permission or approval to take the sale consideration as advance and would be considered as deposit as per sub-clause 2(xv)(b) but the plea advanced in this regard is devoid of merit. First of all, there is exclusion clause to section 2 (xiv)(b) which provides that unless specifically excluded under this clause. Earlier, the deposits received by the companies or the builders as advance were considered as deposits but w.e.f. 29.06.2016, it was provided that the money received as such would not be deposit unless specifically excluded under this clause. A reference in this regard may be given to clause 2 of the First schedule of Regulated Deposit Schemes framed under section 2 (xv) of the Act of 2019 which provides as under:-

The following shall also be treated as Regulated Deposit Schemes under this Act namely: -

(a) deposits accepted under any scheme, or an arrangement registered with any regulatory body in India constituted or established under a statute; and

(b) any other scheme as may be notified by the Central Government under this Act.

30. The money was taken by the builder as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach

the authority for redressal of his grievances by way of filing a complaint.

31. It is not disputed that the respondent is a real estate developer, and it had obtained registration under the Act of 2016 for the project in question. The authority under this Act has been regulating the advances received under the project and its various other aspects. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. If the project in which the advance has been received by the developer from an allottee is an ongoing project as per section 3(1) of the Act of 2016 then, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainants besides initiating penal proceedings.

G. Directions of the authority'

32. Hence, the authority, hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

i. The respondent is directed to give possession to the complainants after receipt of occupation certificate.

ii. The respondents are also directed to pay the amount of assured return as agreed upon with the complainants from August 2018 till the date of handing over possession.

iii. The complainants are directed to pay outstanding dues, if any, after adjustment of amount of assured returns.

iv. The respondent shall not charge anything from the complainants which is not part of the agreement of sale.

33. Complaint stands disposed of.

34. File be consigned to registry.

(Dr. K.K. Khandelwal)
Chairman

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.11.2021

Judgement uploaded on 16.03.2022.