HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY GURUGRAM

हरियाणा भू–संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana   नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

PROCEEDINGS OF THE DAY	24

Day and Date	Wednesday and 22.11.2023
Complaint No.	CR/333/2023 Case titled as Jagmohan Enterprises LLP VS NEO Developers Private Limited
Complainant	Jagmohan Enterprises LLP
Represented through	Shri Rajinder Singh Advocate
Respondent	NEO Developers Private Limited
Respondent Represented through	Shri Venket Rao, Ms. Ankita Saikia and Shri Gunjan Kumar Advocate
Last date of hearing	09.08.2023
Proceeding Recorded by	Naresh Kumari

Proceedings

The present complaint was filed on 06.02.2023 and the reply received on 15.11.2023.

The complaint has been filed for seeking payment of balance assured return, quashing of subsequent VAT demand, penalty charges with interest as per RERA Act and handing over of possession after completing the project in which the unit of the allottee is situated.

Succinct facts of the case as per complaint and annexures are as under:

S. N.	Particulars	Details
1.	Name of the project	Neo Square, Sector-109, Gurugram
2.	Project area	2.71 acres
3.	Nature of the project	Commercial colony
4	Unit no.	25, 2nd Floor

5	Unit area admeasuring	583 sq. ft. (super built-up area)
6	MOU dated	17.04.2013 (page 18 of complaint)
7	Due date of possession	17.04.2016 **[Calculated as per *Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018*]**
8	Sale consideration	Rs.23,90,300/- (as per application form on page 53 of reply)
9	Amount paid by the complainant	Rs.28,29,210/- (as per SOA on page 61 of reply)
10	Assured return clause	3. That Company hereby has agreed to allot to the Allottee(s) premises measuring 583 sq.ft. (54.16 sq.mtr.) super built up area on the Second floor of Tower of the said Project. The Allottee(s) has opted for the 'Investment Return Plan' and has agreed that the basic consideration for allotment of the premises is to be determined at Rs. 4100/- per sq.ft. taking into consideration a return of Rs 85.0/- per sq.ft. per month, subject to the terms of this MOU. Return is provided till first lease is offered to the customer.
11	Assured return paid	Rs.36,42,293/- (as per SOA on page 61 of reply)
12	First lease deed and addendum	24.07.2020 (page 62 of reply)
13	Lease assignment request	10.12.2020 (page 82 of reply)
14	Final Notice	07.06.2021 (page 38 of complaint)

15	Occupation certificate /Completion certificate	Not obtained
16	Offer of possession	Not obtained

The counsel for the complainant states that the complainant had made payment of full amount of consideration on the date of signing of the MoU with the assurance that the assured return amount will be paid to the complainant regularly on monthly basis till the first lease of property after completion of the project. However, a communication dated 18.12.2019 was received from the respondent in which it was stated that they are in the process of applying for occupation certificate and further that in view of RERA guidelines, 70% of the amount received from the sale of real estate project is required to be deposited in a separate account to cover the cost of construction and land cost only. Owing to the restriction being imposed upon the respondent, it would become illegal for them to withdraw the funds from the bank account towards the monthly assured return and the respondent is left with no other option but to adjust the payments towards monthly interest at the time of possession. The counsel for the complainant further states that vide letter dated 30.03.2017, a subsequent demand for payment of VAT amounting to Rs.20,000/- was made and also paid by the complainant. Further, vide communication dated 22.01.2020, another VAT demand was raised amounting to Rs.3,19,505/- without explaining the reasons for the same. The due date for handing over of possession was within 36 months from the date of commencement of construction. The commencement of construction to the knowledge of the complainant was 2015 and the due date of possession was 2018. The project is yet not complete.

The counsel for the respondent states that the matter regarding jurisdiction of this authority w.r.t payment of assured return has been challenged before the Hon'ble High Court of Punjab and Haryana in CWP No.16896-2023 which is listed for hearing today and is clubbed with CWP No.26740-2022 titled as *Vatika versus Union of India* and the matter may not be decided till the issue is finally adjudicated by the Hon'ble High Court. The counsel for the respondent states that his right for arguments on merits may be reserved.

Part arguments heard.

Matter to come up on **28.02.2024** for further arguments.

Ashok Sangwan
Member
22.11.2023