



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		72
Day and Date	Tuesday and 30.04.2024	
Complaint No.	CR/7625/2022 Case titled as Vijay Kumar and Kanika Aggarwal VS Vatika Limited	
Complainant	Vijay Kumar and Kanika Aggarwal	
Represented through	Shri K.K. Kohli Advocate	
Respondent	Vatika Limited	
Respondent Represented	Ms. Ankur Berry Advocate	
Last date of hearing	06.02.2024	
Proceeding Recorded by	Naresh Kumari and HR Mehta	
Proceedings		
<p>The present complaint has been filed on 22.12.2022 and reply was received on 31.03.2023.</p> <p>On 06.02.2024, The counsel for the complainant states that he does not wish to file the reply to the application for placing additional documents on record. He further stated that the complainant is seeking assured return and possession in terms of the Addendum to the BBA dated 19.05.2011.</p> <p>Succinct facts of the case are as under:</p>		
S. No.	Particulars	Details
1.	Name of the project	Vatika INXT City Centre at Sector 83, Gurugram, Haryana
2.	Nature of the project	Commercial complex
3.	Area of the project	10.48 acres
4.	DTCP license no.	122 of 2008 dated 14.06.2008



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	Valid up to	13.06.2016
5.	HRERA registered or not	Not registered
6.	Allotment letter dated	19.05.2011 [Page 66 of complaint]
7.	Date of builder buyer agreement	19.05.2011 [Page 31 of complaint]
8.	Addendum to BBA dated 19.05.2011 executed on	Undated [Page 60 of complaint]
9.	Unit no. as per the BBA dated 19.05.2011	279A, 2 nd floor, tower no. A admeasuring 500 sq. ft. in Vatika Trade Centre [Page 34 of complaint]
10.	Relocation of commercial project Vatika Trade Centre vide letter dated	27.07.2011 [Page 62 of complaint]
11.	Shifting of unit vide letter dated	25.04.2013 [Page 49 of complaint]
12.	New unit no. as per letter dated 25.04.2013	609, 6th floor, block F, admeasuring 500 sq. ft. in INXT City Centre [Page 49 of complaint]
13.	Possession clause as per clause 2 of BBA dated 19.05.2011	<i>The Developer will complete the construction of the said complex within three (3) years from the date of execution of this agreement. Further, the Allottee has paid full sale consideration on signing of this agreement, the Developer further undertakes to make payment of as per Annexure-A (Rupees.....) per sq. ft. of super</i>



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		<p><i>area per month by way of committed return for the period of construction, which the Allottee duly accepts. In the event of a time overrun in completion of the said complex the Developer shall continue to pay to the Allottee the within mentioned assured return until the unit is offered by the Developer for possession.</i></p> <p>[Page 34 of complaint]</p>
14.	Due date of handing over possession as per BBA dated 19.05.2011	19.05.2014
15.	Assured return/ committed return as per addendum of BBA	<p style="text-align: center;">ANNEXURE A ADDENDUM TO THE AGREEMENT DATED 19.05.2011</p> <p>The unit has been allotted to you with an assured monthly return of Rs. 65/- per sq. ft. However, during the course of construction till such time the building in which your unit is situated is ready for possession you will be paid an additional return of Rs. 6.50/- per sq. ft. Therefore, your return payable to you shall be as follows:</p> <p>This addendum forms an integral part of builder buyer Agreement dated 19.05.2011</p> <p>A. Till Completion of the building: Rs. 71.50/- per sq. ft.</p> <p>B. After Completion of the building: Rs. 65/- per sq. ft.</p> <p>You would be paid an assured return w.e.f. 19.05.2011 on a monthly basis before the 15th of each calendar month.</p> <p>The obligation of the developer shall be to lease the premises of which your flat is part @ Rs. 65/- per sq. ft. In the eventuality the achieved return being higher or lower than Rs. 65/- per sq. ft. the following would be payable.</p>



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		<p>1. If the rental is less then Rs. 65/- per sq. ft. then you shall be refunded @Rs. 120/- per sq. ft. (Rupees One Hundred Twenty only) for every Rs. 1/- by which achieved rental is less then Rs. 65/- per sq. ft.</p> <p>2. If the achieved rental is higher than Rs. 65/- per sq. ft. then 50% of the increased rental shall accrue to you free of any additional sale consideration. However, you will be requested to pay additional sale consideration @Rs. 120/- per sq. ft. (Rupees One Hundred Twenty Only) for every rupee of additional rental achieved in the case of balance 50% of increased rentals.</p> <p>[Page 60 of complaint]</p>
16.	Completion of construction for Block F dated	27.03.2018 [Page 70 of complaint]
17.	Total sale consideration as per clause 1 of BBA dated 19.05.2011	Rs. 24,37,500/- [Page 34 of complaint]
18.	Amount paid by the complainant as per clause 2 of BBA dated 19.05.2011	Rs. 24,37,500/- [Page 34 of complaint]
19.	Offer of possession	Not offered
20.	Occupation certificate	Not obtained
21.	Amount of assured return paid by the respondent to the complainants till September 2018	Rs.31,26,500/- [Page 8 and 39 of reply]



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The complainants have sought following relief:

1. Direct the respondent to handover the **possession** of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of possession for certain unwanted reasons.
2. Direct the respondent to pay the **interest** on the total amount paid by the complainant at the prescribed rate of interest as per the Act from due date of possession till date of actual physical possession as the possession is being denied to the complainant by the respondent inspite of the fact that the complainant desires to take the possession.
3. Direct the respondent to pay the **due amounts towards assured return.**
4. Direct the respondent to **not execute any agreements of sale or conveyance deed/ sale deed with any third party** in respect of the unit allotted to the complainant.
5. Direct the respondent to **compensate** the complainants for mental agony and harassment on account of deficiency in service and litigation cost.
6. Direct the respondent **not to charges anything which is not part of payment plan.**

The counsel for the respondent states that the present complaint is not maintainable or tenable in the eyes of law as the reliefs being claimed by the complainant cannot be said to fall within the realm of jurisdiction of this Ld. Authority. Further states that due to the passing of the ordinance regarding banning of unregulated deposits, a communication was sent to the allottees including the present complainant on 31.10.2018 informing them of the amendment in the SEBI Act and further of the fact that they would be discontinuing with assured returns products in future. Further, vide communication dated 28.12.2018, the complainant was informed that in case he wished to obtained assured return any further, then the respondent had another SEBI registered project in which quarterly returns were available and he could opt for the same. However, no response from the complainant is received. In view of the above, the complainant is estopped from raising the issue at this stage

However, the counsel for the complainant states that the respondent cannot withdraw the assured return unilaterally and the agreement is binding to both the parties and requests for outstanding amount of assured return as per MoU/Addendum alongwith interest.



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नया पी. डब्ल्यू. डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

Arguments heard.

Order reserved.

Both the counsels for the parties are directed to file brief written submissions within a period of 15 days with an advance copy to each other.

Matter to come up on 06.08.2024 for pronouncement of order.


Sanjeev Kumar Arora
Member


Vijay Kumar Goyal
Member


Arun Kumar
Chairman
30.04.2024