HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 2068 OF 2019

Baldev Gautam ....COMPLAINANT(S)

VERSUS

Rise Projects Pvt. Ltd. ....RESPONDENT(S)

2. COMPLAINT NO. 2069 OF 2019

Sandeep Parashar ....COMPLAINANT(S)

VERSUS

Rise Projects Pvt. Ltd. ....RESPONDENT(S)

3. COMPLAINT NO. 2070 OF 2019

Rajeev Kumar Jain ....COMPLAINANT(S)

VERSUS

Rise Projects Pvt. Ltd. ....RESPONDENT(S)

4. COMPLAINT NO. 2071 OF 2019

Rajesh Bhatia ....COMPLAINANT(S)

VERSUS

Rise Projects Pvt. Ltd. ....RESPONDENT(S)

5. COMPLAINT NO. 2072 OF 2019

Bhavik Bhatia ....COMPLAINANT(S)

VERSUS

Rise Projects Pvt. Ltd. ....RESPONDENT(S)

6. COMPLAINT NO. 2080 OF 2019

Divya Jyoti Bhatia ....COMPLAINANT(S)

VERSUS

Rise Projects Pvt. Ltd. ....RESPONDENT(S)

7. COMPLAINT NO. 2081 OF 2019

Sanjay Goel ....COMPLAINANT(S)

VERSUS

Rise Projects Pvt. Ltd. ....RESPONDENT(S)

8. COMPLAINT NO. 2082 OF 2019

Sanjay Goel ....COMPLAINANT(S)

VERSUS

Rise Projects Pvt. Ltd. ....RESPONDENT(S)

9. COMPLAINT NO. 2083 OF 2019

Sanjay Goel ....COMPLAINANT(S)

VERSUS

Rise Projects Pvt. Ltd. ....RESPONDENT(S)

10. COMPLAINT NO. 2833 OF 2019

Rajiv Nangia ....COMPLAINANT(S)

VERSUS

Rise Projects Pvt. Ltd. ....RESPONDENT(S)

CORAM:	**Rajan Gupta**	**Chairman**
	Anil Kumar Panwar	**Member**
	Dilbag Singh Sihag	**Member**

Date of Hearing: 11.03.2020

Hearing: 4th (in complaint nos. 2068, 2069, 2070, 2071, 2072, 2080, 2081, 2082, 2083 of 2019)

3rd (in complaint no. 2833 of 2019)

Present: - Mr. Gaurav Gupta, Proxy counsel for the complainants

Mr. Ashish Chopra, Counsel for the respondent

<u>ORDER</u> (ANIL KUMAR PANWAR - MEMBER)

1. All the above captioned complaints are being taken up for hearing together as the grievances involved therein are similar in nature and are against the same project of the respondent.

2. Replies have already been filed in all the complaints except Complaint No. 2833 of 2019. Respondent shall file his reply in the complaint No. 2833 of 2019 and supply its copy to the complainant a week before the

next date of hearing and he is further directed to deposit the cost of Rs. 10,000/- earlier imposed upon them in complaint No. 2833 of 2019.

3. The main grievance of the complainants is that they have already paid almost 90% amount to the respondent for purchasing studio apartments in their project named “Rise Sky Bungalows” and as per the agreements entered between the parties, the respondent was obliged to pay them monthly assured return @ 10% of the paid amount till the delivery of possession. The respondent had paid them monthly assured returns till May, 2017 in all cases except Complaint No. 2833 of 2019 in which such amount was paid till October, 2016 and had thereafter defaulted in discharging their obligation in this regard. So, the complainants prayer is that to issue directions to the respondent to pay them the assured returns along with its arrears till handing over the possession.

4. Learned counsel for the respondent has argued that the complainants are not entitled to the relief claimed because the respondents could not make payment due to force majeure condition occasioned on account of failure on the part of Municipal Corporation, Faridabad (MCF) in completing internal and external development works. The Authority would not accept this argument because the learned counsel for the respondent has not been able to pin point any clause from the agreements entered between the

parties, revealing that the payment of assured return was depending upon the performance of an obligation by Municipal Corporation.

5. Next point argued by the respondent's counsel is that the respondent's liability, under the agreement, for payment of assured returns was to commence only after payment of 100% of Total Sale Value (TSV). Most of the complainants have not paid 100% amount and therefore, they are not entitled to get assured returns. The relevant clause of the agreement referred in support of such argument is reproduced as under:-

> *"The Second Party shall be* ***entitled to receive Assured Return with effect from the date of receipt of second installment*** *(i.e. with effect from the date of receiving 100% of TSV developer/First Party will pay returns of Rs. 2,36,340/- (Two lac thirty-six thousand three hundred fourty only) per annum on the amount of TSV received by developer/First Party.*
>
> *The return shall be paid to the Second Party on monthly basis after deducting TDS. This return shall be inclusive of all taxes including service tax, if applicable on such returns. The return shall be payable till the date of offer of possession of unit.* ***No returns shall be paid on excess payments, if made or payment made after the due date even if with late payment interest.***"

Since it is mentioned in the aforesaid clause that the buyer will be entitled to get assured returns with effect from the date of receipt of second instalment, the Authority deems it appropriate to reproduce the Payment Plan mentioned in the agreement relating to Complaint No. 2068 of 2019 as under:-

S.No.	Instalments	%	Basic price (Rs.)	Other charge (Rs.)	Amount
1.	On booking of flat	10.00	3,17,670/-	0	3,17,670/-
2.	Within 45 days from booking	40.00	12,70,680/-	0	12,70,680/-
3.	Within 1 year from booking	25.00	7,94,175	0	7,94,175/-
4.	Within 2 year from booking.	25.00	7,94,175/-	0	7,94,175/-
5.	On possession	-	0	19,500/-	19,500/-
	Total:		31,76,700/-	19,500/-	31,96,200/-

Evidently, the clause relied upon by the learned counsel makes it clear that the buyers will be entitled to get assured returns with effect from the date of receipt of second instalment. If so, how can then be said that the respondent's duty to pay assured returns was to take effect only after receiving 100% TSV. In other words, the referred clause is self-contradictory for the reason indicated above and therefore, the Authority would prefer to construe the clause in the manner as it was acted upon by the parties. Concededly, the respondent had paid assured returns to the complainants till the year 2017. It has to be, therefore, necessarily held that the respondent's liability to pay the assured return had already commenced and his failure to continue paying it till delivery of possession, is unjustifiable and the complainants are entitled to receive the assured returns as prayed for.

6. As a last resort, the respondent's counsel has argued that some of the complainants have defaulted in payment of due instalments and, therefore, they are not entitled to assured return. The relevant clause of the agreement, as reproduced above, indeed provides that no return shall be paid on excess payment, if made or payments made after the due date even if with late payment interest. Such condition in the agreement, in the considered opinion of this Authority, only warrants a right to the promoter to ignore the payments, if any made after the due date, for the purpose of calculating the amount of assured returns. The language of the condition so provided in the agreement does not at all absolves the promoter of his liability to pay the amount which he had been already remitting on monthly basis to the allottees as assured return. Rather, the said condition only saves the promoter from enhancing the amount of the assured returns in respect of the additional amount paid with late interest. The amount of assured returns which the respondents was paying to the allottees prior to commission of default in respect of a particular instalment, thus, will continue payable by the promoters. He can only seek escape from paying the extra amount of assured returns on the amount of payments remitted after the commission of default in respect of a particular instalment.

7. The respondents have not disclosed in their pleadings as to when the complainants had committed default in payment of instalments. They are, therefore, directed to file these details in respect of each complainant to enable the Authority to decide as to what amount is payable by the respondents to each of the complainant as assured returns, till the delivery of possession.

8. The respondents shall also disclose to the Authority, the manner in which they had calculated the amount of assured return which they had been paying to the complainants till the year 2017.

9. With these directions, cases are adjourned to **<u>06.05.2020.</u>**

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RAJAN GUPTA
[CHAIRMAN]

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ANIL KUMAR PANWAR
[MEMBER]

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DILBAG SINGH SIHAG
[MEMBER]