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: **Anil Kumar Panwar** **Member**
Dilbag Singh Sihag **Member**

Date of Hearing: **10.12.2020**

Hearing: 7th (in complaint nos. 2068, 2069, 2070, 2071, 2072, 2080, 2081, 2082, 2083 of 2019)

6th (in complaint no. 2833 of 2019)

Present: - Mr. Vikas Deep, Ld. counsel for the complainants through video conference

Mr. Aashish Chopra, Ld. counsel for the respondent through video conference

<u>ORDER</u> (DILBAG SINGH SIHAG - MEMBER)

1. All the 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 respondents.

2. Reply filed in complaint No. 2833 of 2019 on 20.10.2020. However, respondent is directed to pay earlier imposed cost of ₹10,000/- for delay in filing reply in said case.

3. While perusing the record file of the case, it is revealed that vide order dated 11.03.2020, respondent was directed to file details of default committed by complainants in payment of instalments. In compliance of the said order, respondent has filed calculation sheets depicting the dates on which instalments were to be paid by the complainants; due amount; amount received by the respondent; date of receipt of payments and delay caused thereby in making timely payments. Respondent was also directed to disclose the manner in which they had calculated the amount of assured return which they had been paying to the complainants till the year 2017. However, respondent has only provided details of total amount paid to the complainants as monthly assured returns without mentioning the manner in which said returns were calculated and were paid to the complainants.

4. Ld. counsel for the complainants states that he has not received the copies of above said calculation sheets filed by the respondent. So, respondent is directed to supply one set of copies of the same to ld. counsel for the complainants during the course of the day. Moving further, ld. counsel for the complainants further states that Authority had already deliberated upon the merits of the cases and detailed order had been passed on 11.03.2020

whereby Authority has held that monthly assured returns are payable to the complainants and respondent shall continue to pay the same till possession is of respective apartments stands handed over. The only issue left to be decided is the amount to be paid to each of the complainants as monthly assured returns for which respondent was directed to file details of default committed by complainants in payment of instalments. He further argues that respondent has never stated that the payment of monthly assured returns made by him till 2017 were wrongly made and therefore once the respondent had made the payments for a certain time, he can't stop the same abruptly as principle of estoppel will apply on him. Further, the only reason for which respondent has stopped paying the assured returns is that Municipal Corporation, Faridabad (herein after referred as MCF) had not completed the development works. Payment of monthly assured returns was made as per the agreement executed between the parties and was not subject to the completion of development works by MCF. For said reasons, respondent shall be directed to pay monthly assured returns along with its arrears till handing over the possession.

5. On the other hand, first and foremost, argument of ld. counsel for the respondent is that payment of monthly assured returns to the complainants amounts to payment of compensation, which as per RERA Act does not fall within the jurisdiction of the Authority. However, such averment is not a part of his written submissions. He further alleges that complainants have

defaulted in making timely payments details of which have already been filed before the Authority. Said contention has been duly stated in replies filed by the respondent and the complainants have not filed any rejoinder to replies filed by the respondent. Meaning thereby, complainants do not object to the fact that they have defaulted in making timely payments. So, as per clause (2) of agreement dated 30.04.2014 (for instance in complaint no. 2068 of 2019) executed between the parties regarding assurance of monthly assured return, respondent is not liable to pay monthly assured returns to the complainants in case of default made by them in paying the instalments. Furthermore, if the respondent had under mistaken belief paid certain amount to the complainants, he can't be compelled to continue paying the same and law of estoppel will not apply on him to constrain him to pay something which is not mentioned in the agreement.

6. After perusal of record, Authority observes that the cases were discussed at length and a detailed order was passed on 11.03.2020 whereby it was prima facie observed that complainants are entitled to be paid monthly assured returns as per their agreements. However, they were adjourned with a direction to the respondent to file details of defaults committed by the complainants so as to enable the Authority to decide the amount payable to each of the complainant as monthly assured returns. Today again arguments were heard and after hearing both the parties, Authority observes that the

respondent has not put forward any convincing argument on the point that respondent is not liable to pay monthly assured returns to the complainants apart from the ones already argued on 11.03.2020. However, ld. counsel has sought to argue that the Authority does not have jurisdiction to award monthly assured returns. Said contention is out rightly rejected for the reason that payment of assured returns is as per provisions of agreements executed between the parties and both the parties are under an obligation to abide by the terms and conditions of said agreements. Respondent can't escape his liability of paying monthly assured returns by merely stating that it will amount to grant of compensation for the reason that it is an obligation cast upon him by virtue of the agreements voluntarily entered by him. It is in no way can be said to be compensation to be given to the complainants.

7. With regard to other arguments raised by ld. counsel for the respondent, Authority had already given its findings in its order dated 11.03.2020. Operative part of said order is reproduced here for ready reference:

> "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 respondents 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."

In compliance of above said order, respondent has filed calculations depicting therein the delay on the part of the complainants in paying instalments. Copy of the same has not been supplied to the complainants who sought the same and further time to reply on them. Authority observes that although there is default on part of some complainants to make timely payments but against those allottees respondent-promoter could have charged delay interest. There was no ground for the respondent to stop paying assured returns. Respondent had ignored such default of complainants in paying timely instalments and he had consciously paid assured returns till 2017 but stopped paying thereafter for the reason that MCF had not completed development works. However, it is worth mentioning here that payment of assured returns was not conditional upon the performance of an obligation to be discharged by the MCF as per record placed before the Authority. This is a dispute between the respondent-promoter and the MCF and it would not have any effect upon the rights of the allottees. Since, ld. counsel for the respondent made a submission to allow him to present some more documents in support of his submissions, the same is allowed. However, both the parties are directed to file calculations of payable and receivable amounts. Complainants are also directed to file their calculations regarding monthly assured returns along with its arrears and interest accrued 31.12.2020 as per Rule 15 of HRERA Rules, 2017.

8. With these directions, cases are adjourned to **02.02.2021.**

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ANIL KUMAR PANWAR
[MEMBER]

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DILBAG SINGH SIHAG
[MEMBER]