

**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM**

<b>Complaint no.</b>	:	<b>937 of 2020</b>
<b>Date of filing complaint:</b>		<b>25.02.2020</b>
<b>First date of hearing:</b>		<b>16.04.2020</b>
<b>Date of decision</b>	:	<b>15.09.2022</b>

Atul Raizada <b>R/o:</b> L-32/7, DLF City, Phase-2, Gurugram, Haryana-122002	<b>Complainant</b>
Versus	
M/s Mascot Buildcon Pvt. Ltd. <b>Registered office at:</b> 294/1 Vishwakarma Colony Mehrauli Badarpur Road, New Delhi - 110044	<b>Respondent</b>

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Complainant in person with Sh. Manish Yadav (Advocate)	Complainant
Sh. Gulshan Sharma and Sh. Rahul Bhardwaj (Advocates)	Respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottee 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 the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"Oodles Skywalk", Village Sihi, Sec 83, Gurugram
2.	Project area	3.0326 acres
3.	Nature of the project	Commercial complex
4.	DTCP license no. and validity status	08 of 2013 dated 05.03.2013 and valid up to 04.03.2017
5.	Name of licensee	Dharam Singh
6.	RERA Registered/ not registered	294 of 2017 dated 13.10.2017
	RERA Registration valid up to	31.12.2019
7.	Unit no.	SA-16-09 16th floor, [As per email dated 05.06.2014 at page 54 of the complaint] Service apartment hotels SA17-17, 17th floor [Annexure 8 at page no. 60 of the complaint] Revised unit -Food Court with Virtual space [As per email dated 01.11.2017 annexed with the reply]
8.	Unit measuring (super area)	500 sq. ft. [Annexure 8 at page no. 60 of the

		complaint] Revised area-550 sq. ft. [As per email dated 01.11.2017 annexed with the reply]
9.	Date of allotment letter	18.01.2016 [Annexure 8 at page no. 60 of the complaint]
10.	Date of execution of builder buyer agreement	BBA IS NOT EXECUTED
11.	Date of Memorandum of understanding	01.07.2013 [Annexure 5 at page no.40 of the complaint] Since no buyer's agreement has been executed inter-se parties, MOU dated 01.07.2013 shall be treated at par of agreement.
12.	Date of start of construction of the project	21.03.2014 as per CR no. 2311 of 2021
13.	Possession clause	"38. The "Company" will, based on its present plans and estimates, contemplates to offer possession of said unit to the Allottee(s) <b>within 36 months of signing of this Agreement or within 36 months from the date of start of construction of the said building whichever is later with a grace period of 3 months, subject to force majeure events or Governmental action/inaction. If the completion of..."</b> (Emphasis supplied)
14.	Assured return clause	<b>As per clause 3 of MOU dated 01.07.2013</b> <b>Clause 3.1</b> After the expiry of 24 months of this MOU till the notice of offer of possession is issued, the Developer shall pay to the allottee an assured return @Rs.77.79/- After offer of possession and till the commencement of first lease rental to the allottee an assured

		return @ Rs.71.25/- per sq. ft. of super area of premises per month. The assured return shall be subject to tax deduction at source, which shall be payable on or before 7th day of every English calendar month on due basis.
15.	Due date of delivery of possession	21.03.2017 Calculated from the date of start of construction as BBA has not been executed and possession clause has been taken from the complaint of the similar project.
16.	Payment plan	Construction linked payment plan [Page 87 of the complaint]
17.	Total sale consideration	Rs.31,31,000/- [Page 44 of the complaint]
18.	Total amount paid by the complainant	Rs.25,00,265/- [As per clause 1.3 of MOU dated 01.07.2013 at page 45 of the complaint] The complainant contended in his complaint on page no. 5 that he had also made a payment of Rs.6,90,400/- in cash to the respondent i.e. he has paid Rs.31,90,400/- in totality
19.	Occupation Certificate	Not obtained The counsel for the respondent confirms that occupation certificate has been applied but has not been obtained so far.
20.	Offer of possession	Not offered
21.	Amount received by the complainant by way of assured returns	Rs.4,27,857/- As told by counsel that the assured return has been paid to the complainant from August 2015 to June 2016

**B. Facts of the complaint:**

3. That the complainant made payment to the tune of Rs 25,00,000/- vide cheques no.027303 dated 31.05.2013 of Rs 5,00,000/-, cheques no.027305 dated 30.06.2013 of Rs. 15,00,000/- & cheques no.027307 dated 31.07.2013 of Rs 5,00,000/- drawn on HSBC Bank and also made payment of Rs 6,90,400/- in cash to the respondent i.e. **in totality the complainant made payment of Rs 31,90,400** though the consideration received was reflected only Rs 25,00,265/- in the MoU. The cheques were issued in the favour of respondent i.e. M/s Mascot Buildcon Pvt. Ltd.
4. That a MoU dated 01.07.2013 was got executed between the parties. That the complainant again agitated for showing less consideration in the MoU and requested to issue cash receipt for the same but the respondent turned down the request of the complainant and the MoU could be looked into to infer the payment as per unit sale price of the total consideration in the MoU shows Rs. 6262 per sq. ft. whereas the project was launched by the respondent at Rs. 9000 per sq. ft. and the MoU of the other allottees could be seen to corroborate the claim of the complainant. That the complainant was allotted super area of approx. 500 sq. ft. in the service apartment category and as per clause 3.1 of the MoU the respondent assured to give assured return @ Rs 77.79 per sq. ft. per month till the notice of offer of possession and after offer of possession and till the commencement of first lease rental to the allottee from the lease, the respondent assured to pay to the complainant an assured return @ Rs 71.25 per sq. ft per month.

5. That the complainant was called to the office of developer company of the respondent and was allotted **unit no. SA16-09 on the 16th floor area admeasuring 500 sq. ft.** That the respondent collected money in the name of M/s Mascot Buildcon Pvt. Ltd and issued a standard form application and a space buyer agreement while original license was issued in the name of Mr. Dharam Singh S/o Mr. Shish Ram vide License No. 08 of 2013 in collaboration with M/s Home Town Properties Pvt. Ltd.
6. The complainant was paid assured return as per MoU at the rate of Rs. 35,006/- per month [Rs.77.79 per sq. ft. for 500 sq. ft. i.e.  $(77.79 \times 500) = \text{Rs. } 38,895 - \text{Rs. } 3,889$  (being 10% T.D.S.)] for 11 months only from the month of August 2015 to June 2016 and after that the respondent stopped paying assured return did not pay the assured return thereafter till date.
7. That the complainant requested respondent repeatedly for a space buyer agreement from 2013 onwards however the complainants were not provided the same and the respondent continuously gave false assurances each and every time. After 30 months in January 2016, the complainant received a call from respondent, the complainant was informed that there is again change in a layout plan and the unit has been changed to SA17-17 from SA16-09 admeasuring 500 sq. ft. The complainant was again reallocated unit no SA17-17 on the 17th floor vide communication dated 18.01.2016 from the developer company of the respondent. That the complainant was presented with space buyer agreement by the respondent. But seeing unilateral, arbitrary and one sided terms and clause only in favour of the respondent and against the



letter and spirit of the MoU executed between the complainant and respondent, complainant raised his protest against the same and refused to execute the buyers agreement on account of the fact that the terms of the agreement were not acceptable to the complainant. Besides some terms and conditions which were not part of the MoU more specifically the complainant was forced in the space buyer agreement with the liability to pay for the interiors capital cost and air conditioning cost for the service apartment which was leading to a huge financial burden on the complainant which was never contemplated in the MoU and was against the assurances made in while booking and signing the MoU as the complainant was assured that except registration charges and other statutory dues nothing is left due from the complainant's side. That the respondent assured the complainant to do the needful changes as per the understanding arrived between the parties as per the MoU but neither any written communication to this effect was given by the respondent nor the Amended Space Buyer Agreement was provided by the respondent. That as per the **clause no 38** of the **Unexecuted Space Buyer Agreement** the respondent assured to offer of possession within 36 months of signing the agreement or from the date of start of construction of the said building whichever is later along with a grace period of 3 months.

8. The respondent failed to respond the queries of the complainant and failed to amend the terms and clause as assured in the MoU and after much chase told that Bridgestreet is no more associated with the respondent and failed to credit the assured return as per the MoU and failed to refund the amount of the complainant. That

the respondent shrewdly and cleverly sent email to the respondent citing fake discussions and representations dated 01.11.2017 from the side of the complainant requesting the shifting of area from service apartment to food court with virtual space. That in fact the complainant has categorically conveyed to the officials of the respondent that if Bridgestreet is no more associated with the respondent he is no more interested in continuing with the project and has asked for refund and return of his hard earned money because the respondent was not showing the approvals and building plans even repeatedly being asked by the complainant.

**C. Relief sought by the complainant:**

9. The complainant has sought following relief(s):
  - i. Direct the respondent to refund the sum of Rs. 31,90,400/- advanced to the respondent along with interest as prescribed under the RERA Act.
  - ii. Directing the respondent to pay balance assured return of Rs.26,83,755/- from July 2016 to March 2022 as per the MoU [i.e. Rs. 38,895/- (@77.79 per sq. ft. for 500 sq. ft.) for 69 months].
  - iii. Directing the respondent to pay Rs 5,00,000/- as compensation for the mental harassment and agony suffered by the complainant at the hand of the respondent.
  - iv. Direct the respondent to pay Rs 1,00,000/- as legal fee and expenses bourn by the complainant.

**D. Reply by respondent:**



10. It is stated that "Bridgestreet" has no concern with the respondent. The project was undertaken by the respondent and only after understanding the terms of the application form, the complainant filled it. So far as issuance of licence in the name of M/s Hometown Properties is concerned, same is matter of record, which is also a company owned and managed by respondent only wherein Directors are common. Thus, issuance of licence in the name of M/s Hometown Properties has no wrong.
11. In this regard, it is pertinent to note here that complainant of his own chosen to cancel such unit and opted for another space in the Food Court, however, despite choosing such option and writing letters by the respondent in this regard to the complainant, till date the complainant has not submitted all the original documents relating to the unit concerned, so that process of allotment of Food Court would be done. Moreover, since the complainant has himself opted for "surrender" of his unit, the assured return payable under the MoU was already ceased as the complainant has sought transfer of his own amounts in the other Food Court. The complainant himself when opted for surrender and already cancelled his two units.
12. The complainant himself chosen an option for shifting of his area from service apartment to the Food Court with virtual space, for which, a mail dated 1.11.2017 was also written to him.
13. With regard to the allegations asserted, it is stated that the factum of giving possession, its deadline, time-limit and expected date as per RERA was clearly conveyed to the complainant since inception. It is further vehemently denied that a mere glance will make it clear, that the said agreement is a one-sided agreement as

all the major clauses therein solely protect the interest of the respondent.

14. The however, complainant till date did not execute the said document, despite knowing and showing all the relevant approvals, sanctions, Layout Plan with his ulterior motives. It is vehemently denied that it was misrepresented that the booking company was in the process of obtaining permissions contrary to the fact that the license was never issued in their name as it was in the name of M/s Home Town Properties. In this regard, it is stated that respondent no. 1, being the principal builder, has assigned/allocated different-different works related with the project to different different sub-contractor/companies for the purpose of urgent smooth expeditious working of the project and in this regard had also executed the agreements with M/s Home Town Properties & Contractors, who would according to the terms and conditions of their executed documents/agreements, complete the construction work related with the project. Moreover, all the requisite and necessary permissions related with the project and for its completion have already been taken/obtained by the respondent. Further, the complainant failed to point out as to what facts have been misrepresented, more so the allegation that the IDC, EDC were not made clear to the complainants, when, on the contrary under the heading "Schedule of Payment", which is part of Application Form, the charges were clearly mentioned. Thus, it is wrong to allege or to say that there was any misrepresentation on the part of the respondent. It is further denied that some terms and conditions which were not part of the MoU more specifically the complainant liability to pay

for the interiors capital cost and air was forced in the SBA with the conditioning cost for the service apartment, which was leading to a huge financial burden on the complainant, which was never contemplated in the MOU and was against the assurances made in while booking. The complainant was duly shown all the Licence Copy, Building Plan, Layout Plans.

15. It is further denied that respondent was not showing the approvals and building plans even repeatedly being asked by the complainant. This allegation is totally false and frivolous as the complainant himself personally visited the site office and main office of the respondent and he was shown all the necessary approvals and site plan layout plan and it is only after satisfying himself and seeing such approvals/sanctions and other documents related to the project in question, he has made the payments. However, the complainant still is a defaulter as he has not made the complete payment relating to the unit in question excluding other charges payable by him.
16. In this regard, it is respectfully submitted that whenever the complainant wants any update regarding the project, he used to call the representative / officials of the respondent company and he was apprised with the project, otherwise what occasioned him to make the payments. Making payments also confirm this fact that complainant was duly satisfied with the construction work, otherwise, he could have stopped making the payment also, however, he has not done so. The construction of the project in question is in full swing and is most likely to be delivered very soon as per RERA deadline and extensions, applied for.

17. The question of withdrawing from the project does not arise at all as the money given by the complainant has already been invested/undertaken in the construction of the project. Rather, it was the complainant who is required to make the further payment as per the plan, which is a due payment alongwith other charges for the successful smooth completion of the construction work of the project in question. The money given by the complainant has already been spend on the construction of the project and thus in no probability, the question of refund of money does not arise at all.
18. The complainant was required to make further payment, however, he failed to make the further payment, which is still due excluding other charges. So far as agreement is concerned, SBA has been given way back to the complainant, however, he failed to sign the same till date, despite many requests and reminders, more so, when on the strength of the documents, on which he is alleging is case, has already been shown to him way back.
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 submission made by the parties.

**E. Jurisdiction of the authority:**

20. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.1 Territorial jurisdiction**

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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;*

#### **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 objections raised by the respondent:****F.1 Objection regarding default in making payments due by the complainant:**

21. The respondents have alleged that the complainant having breached the terms and conditions of the agreement and contract by defaulting in making timely payments. Further the above-mentioned contention is supported by the space buyer agreement executed between both the parties. Clause 24 provides those timely payments of the instalments and other charges as stated in the schedule of payment is essence of the agreement.

But the plea raised in this regard is devoid of merit. The unit in question was booked by the complainant in the year 2013 and within a month of its booking he paid a sum of Rs. 25,00,265/- against total sale consideration of Rs. 31,31,000/- so, there was no occasion for the complainant in making delay of any payment against the allotted unit as alleged by the respondents. Thus, the plea in this regard is just for the sake of objection and is untenable.

**G. Findings regarding relief sought by the complainant:**

**G.1 Direct the respondent to refund the sum of Rs. 31,90,400/- advanced to the respondents alongwith interest as prescribed under the RERA Act.**

**G.2 Direct the respondent to pay balance assured return of Rs.26,83,755/- from July 2016 to Jan 2020 as per MOU.**

The above-mentioned relief no.1 and 2, as sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and these reliefs are interconnected.



22. The complainant was allotted the subject unit by the respondent for a total sale consideration of Rs. 31,31,000/- as per page no. 44 of the complaint. A buyer's agreement has not been executed between the parties but there is memorandum of understanding dated 01.07.2013 which has been executed between the parties and has been placed on record. The due date of possession of the subject unit was calculated as per clause 38 where the possession has to be handover **within 36 months from the date of execution of this agreement or from the start of construction whichever is later** and which comes out to be 21.03.2017 as the authority has decided the date of construction as 21.03.2014 which was agreed to be taken in the other complaints of similar projects . The complainant started depositing various amounts against the allotted unit and alleged that he had paid a sum of Rs. 25,00,265/- at page no. 45 of the complaint. It is the case of complainant that since the construction of project was not as per schedule of payment, so they stopped making remaining amount due to the respondent and which ultimately led to their withdrawal from the project.
23. Keeping in view the fact that the allottee complainant wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.

The due date of possession as per agreement for sale as mentioned in the table above is 21.03.2017 and there is delay of approximately 3 years on the date of filing of the complaint.

The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

*“ ... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase I of the project.....”*

Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)*** reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022. it was observed

*25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate*

*prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed*

24. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
25. The execution of MOU dated 01.07.2013 between the parties is not disputed which provides a provision for assured returns against the allotment of the unit. The complainant even admitted having received assured returns against the allotted unit as per clause 3 of MOU dated 01.07.2013. The authority hereby directs the promoter to return the amount received by him with interest at the rate of 10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as

on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*. So, if any amount has been received by the complainant under assured returns, then the same would be deducted while calculating the amount so refundable to him by the respondent besides interest at the prescribed rates from the date of each payment.

**G.3. Compensation and litigation cost:**

The complainant is claiming compensation in the present relief. The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee can claim. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before adjudicating officer under section 31 read with section 71 of the Act and rule 29 of the rules.

**H. Directions of the authority:**

26. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act of 2016 to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act of 2016:

- i. The respondent /promoter is directed to refund the amount received by it from the complainant along with interest at the rate of 10% p.a. as prescribed under rule 15


of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.

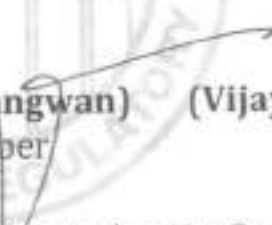
- ii. The amount received by the complainant if any by way of assured return from the respondent as per clause 3 of MOU dated 01.07.2013, would be deducted while calculating the amount to be refunded to him by the respondent.
- iii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

27. Complaint stands disposed of.

28. File be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

  
(Ashok Sangwan)  
Member

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.09.2022

**HARERA**  
**GURUGRAM**