


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

Complaint no. :	1970/2021
Date of filing complaint:	20.04.2021
First date of hearing:	10.05.2021
Date of decision :	06.10.2022

1.Charanjeet Sandhu 2. Gurteg Sandhu 3. Harpuja Sandhu 4. Harpriya Khattra All R/o: -104, Sec 2, Panchkula, Haryana- 134112	 Versus	<b>Complainants</b>
M/s Orris Infrastructure Private Limited Regd. office: J-10/5 DLF Phase 2, Gurugram- 122002		<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>		
Sh. Garvit Gupta		Advocate for the complainants
Ms. Charu Rustagi		Advocate for the respondent

**ORDER**

1. The present complaint has been filed by the complainants/allottee in Form CRA 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 to the allottee as per the agreement for sale executed inter-se them.

**A. Unit and Project related details:**

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession delay period, if any, have been detailed in the following tabular form:

S. No	Heads	Information
1.	Name and location of the project	"Orris Business Square", Sec 82A Gurugram
2.	Nature of the project	Commercial complex
3.	Project area	9.5 acres
4.	DTCP License	185 of 2008 dated 29.10.2008
5.	Name of the licensee	M/s Cranes Developers Private Limited
6.	RERA registered/ not registered	Unregistered
7.	Date of allotment	N/A
8.	Date of execution of space buyer's agreement	BBA has not been executed
9.	Memorandum of understanding	04.09.2010 [Page 25 of the complaint]  Addendum to the Memorandum of understanding 04.09.2010-26.12.2018 [Page 37 of the complaint]
10.	Unit no.	1109, 11th floor, Tower C [Page 27 of the complaint]
11.	Super area	500 sq. ft. [Page 27 of the complaint]
12.	Payment plan	Assured return Investment plan

13.	Total consideration	Rs.25,00,000/- [Page 27 of the complaint]
14.	Total amount paid by the complainants	Rs.25,00,000/- [As per receipts annexed at page 22 to 24 of the complaint]
15.	Possession clause	N/A
16.	Assured return clause	<i>The developer shall give an investment return @Rs.60/- per sq. ft per month i.e. Rs.30,000/- with effect from 1st October, 2010 on or before 7th day of every month for which it is due up to the first 36 months after completion of the building or till the date the said office space is put on lease, whichever is earlier.</i>
17.	Due date of possession	<b>Cannot be ascertained</b>
18.	Offer of possession	Not offered
19.	Occupation certificate	Not obtained
20.	Amount received by way of assured returns	Rs.23,40,000/- As admitted by the respondent at page no. 2 of the reply that assured return has been paid up to March 2017

**B. Facts of the complaint:**

3. That the respondent informed the complainants that any investment made by them in the proposed 'Orris Business Square' would earn them handsome returns. The respondent also represented to the complainants that all the permissions and sanctions required to execute the 'Orris Business Square' project were in place and construction would commence very shortly. The complainants were also informed that Licence No. I85 A 2008 dated 29.10.2008 had been obtained for developing the project. The complainants were informed that there were a number of schemes under which they could invest in the said project but the

ideal one would be 'Assured Investment Return Plan.' with an assured return Rs.60/- per sq. feet per month.

4. That being taken in by the representations made by the respondent and the assurances of a fixed return on their investment, the complainants decided to invest Rs. 25,00,000 in the purchase of office space in the said proposed 'Orris Business Square, on the 'Assured Investment Return Plan' with an assured return @ Rs.60/- per sq. feet per month i.e. Rs.30,000/-.
5. That the complainants paid Rs 25,00,000/- to the respondent. That on 4.9.2010 a formal Memorandum of Understanding (MOU) was executed by the respondent and the complainants wherein the respondent in clause 2 of the MOU submitted as follows:-

*"2. After receipt of consideration of Rs. 25,00,000, the developer shall give an investment return @Rs. 60/- per sq. feet per month i.e Rs. 30,000/- with effect from 1<sup>st</sup> October 2010 on or before 7<sup>th</sup> day of every month for which it is due up to the first 36 months after completion of the building or till the date the said Office Space is put on lease, whichever is earlier."*
6. That the respondent's responsibilities/ obligations including the liability to give the assured investment return would be discharged only after the proposed office space has been leased out.
7. That in 2017 the respondent started delaying payment of the assured investment return of Rs.30,000/- per month to the complainants. The cheques for the months of January, February and March 2017 were cleared only in April 2017 after being dishonoured by the bank. Thereafter, there has been a continuous

default by the respondent in paying the assured investment return to the complainants forcing the complainants to send the respondent emails suggesting that their money be returned as the respondent were unable to fulfil their commitments and obligations.

8. That the respondent has not paid the assured investment return to the complainants @ Rs.60/- per sq. feet per month i.e. Rs.30,000/- per month since April 2017. A total amount of Rs.14,70,000/- is due to the complainants towards the assured investment return @ Rs.30,000/- per month from April 2017 to April 2021 (49 months).
9. That instead of honouring their obligations and responsibilities under the MOU dated 4.9.2010, the respondent had approached the complainants to alter/amend the original MOU dated 4.9.2010. The respondent proposed an addendum to the said MOU in December 2018 by which they tried to wriggle out of their obligation under the MOU. As per the original MOU the respondent was liable to pay the assured investment return on monthly basis on or before the 7th day of each month. In the addendum the respondent proposed an alteration to the effect that they would only have to pay the assured investment return once in six months. The respondent was in complete breach of trust by proposing the one-sided addendum which being prejudicial to the interest of the complainants were rejected by the complainants.

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10. That it is clear that the respondent is no longer financially sound being unable to fulfil their commitments and are not in a position to undertake the project. Till date no construction has been undertaken by the respondent to develop the project. The respondent seems to have diverted the complainant's money to some other purpose which is illegal. Further, the complainants have also learnt that the licence no.185 of 2008 dated 29.10.2008 which had been obtained by M/s Cranes Developers Private Limited for developing the 'Orris Business Square' project has also since expired.
11. That the complainants sent a legal notice to the respondent through their advocate asking for arrears of the 'Assured Investment Plan' along with the interest and a full refund of initial investment of Rs. 25,00,000/- along with interest. No reply to the notice has been received by the complainants.
12. That the respondent has failed to develop the project and are harassing the complainants by sitting on their hard-earned money. The respondent are in breach of contract and breach of trust by not only paying to the complainants their money under the assured investment on return but have tried to wriggle out of their obligation/liability by proposing to amend the MOU date 4.9.2010.

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

13. The complainants have sought following relief:

- (a) Direct the respondent to refund the amount of Rs. 25,00,000/- along with interest @ 18% p.a. from the date of respective payments till realization.
- (b) Direct the respondent to pay the arrears of the 'Assured Investment Return' Plan from April 2017 to April 2021 i.e. Rs.30,000/- per month for 49 months total amounting to Rs.14,70,000/- along with future interest.
- (c) Direct the respondent to pay a compensation of Rs 5,00,000/- as compensation for mental agony and harassment.
- (d) Direct the respondent to pay the cost of the legal expenses to the tune of Rs.2,25,000/-

**D. Reply by the respondent:**

The respondent has taken grounds for rejection of complaint on the ground of jurisdiction along with reply. The respondent has contested the complaint on the following grounds:

14. That it is crystal clear from the complaint that complainants are not a "allottee, but an investor" who is only seeking assured return from the respondent, by way of present petition, which is not maintainable under RERA.
15. That at the outset it is submitted that from the bare reading of the contents of the present complaint clearly reveals that the complainants had no intentions to have any property and she invested the money only to get the assured return. the complainants had already received the money more than they

invested with the respondent and the same has nowhere been disclosed in the entire complaint. However, after entering into Memorandum of Understanding dated 04.09.2010, the complainants are governed by the terms and conditions stated therein and the complainants had been left with no right to ask for the amount of assured returns, though the respondent as a good entrepreneur continued to pay the amount till March 2017 admittedly.

16. That the respondent had received the booking for unit no. 1109 on 11th floor tower admeasuring a super area of 500 sq. ft. pertaining to the commercial project being developed with the name and style of "Orris Business Square" situated at Sector 82 A, Gurugram, Haryana for a sale consideration of Rs. 25,00,000/-. That the unit was booked by the complainants and in lieu of the said booking she had paid Rs. 25,00,000/- against the unit in question. The MOU was executed between the parties on 04.09.2010, however, no space buyer agreement was ever executed.
17. That the respondent admit the fact that the complainants have booked the said unit by way of MOU (dated 04.09.2010) and as per MOU, complainants have been receiving assured return in the form of profit and thus, complainants are the investors not the allottee as they have booked the said unit with a sole motive to earn profits.
18. That as per the terms and conditions envisaged in the above-mentioned MOU, the respondent was to pay assured return

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amounting to Rs. 30,000/- per month per unit either for a period of 3 years after completion of the building or till the time the unit was placed on lease.

19. That the respondent in terms of its commitment continued to pay assured return to the complainants up to March 2017. The total assured return paid by respondent to the complainants till March 2017 amounts to Rs. 23,40,000/- and the amount of assured returns claimed by the complainants for herself April 2017 till adjudication of the present complaint is wrong, mala-fide and bad in law and clearly shows the illegal attempt to extort monies from the respondent.
20. That it is submitted that the respondent had issued cheques amounting to Rs. 1,67,372/- and the same were sent through post on 27.12.2018 to the complainants and stands delivered but the same were not encashed by the complainants.
21. That without prejudice it is stated that presently the respondent is not able to deliver the project in question nor is able to pay monthly assured return as also that the respondent holds no liability of paying for the assured returns. However, respondent is still without any admission or denial ready to refund the principal amount received from the complainants.
22. However, the RERA authority in view of the RERA Act 2016, that as per the MOU, the assured return is not a formal clause with regard to giving or taking possession of the unit for which, the complainants have paid an amount of Rs 25,00,000/- to the

respondent which is not within the purview of RERA. Since RERA Act deals with the builder buyer relationship to the extent of timely delivery of possession to the buyer or deals with withdrawal from the project, as per provisions of section 18(1) of the Act.

23. 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:**

24. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E. I 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 to objections raised by the respondent**

**F.I. Objections regarding the complainants being investors:**

25. It is pleaded on behalf of respondents that complainants are investors and not consumers. So, they are not entitled to any protection under the Act and the complaint filed by them under Section 31 of the Act, 2016 is not maintainable. It is pleaded that the preamble of the Act, states that the Act is enacted to protect



the interest of consumers of the real estate sector. The Authority observes that the respondents is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states the main aims and objects of enacting a statute but at the same time, the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainants are buyers and paid considerable amount towards purchase of subject unit. At this stage, it is important to stress upon the definition of term allottee under the Act, and the same is reproduced below for ready reference:

*"Z(d) 'allottee' in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold(whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent."*

26. In view of above-mentioned definition of allottee as well as the terms and conditions of the flat buyer's agreement executed between the parties, it is crystal clear that the complainants are allottees as the subject unit allotted to them by the respondents/promoters. The concept of investor is not defined or



referred in the Act of 2016. As per definition under section 2 of the Act, there will be 'promoter' and 'allottee' and there cannot be a party having a status of 'investor'. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal No.0006000000010557 titled as **M/s Srushti Sangam Developers Pvt Ltd. Vs Sarvapriya Leasing (P) Ltd. and anr.** has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being an investor are not entitled to protection of this Act also stands rejected.

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

**G.1. Direct the respondent to refund the amount of Rs.25,00,000/- alongwith interest @ 18% p.a. from the date of respective payments till realization.**

**G.2. Direct the respondent to pay the arrears of the Assured Investment Return plan from April 2017 to April 2021 i.e. 30,000/- per month for 49 months total amounting to Rs.14,70,000/- alongwith future interest.**

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

28. Vide Memorandum of understanding dated 04.09.2010, the complainants were allotted the subject unit by the respondent for a total sale consideration of Rs.25,00,000/- under the assured return investment plan. The memorandum of understanding dated 04.09.2010 was executed between the parties with regard



to that unit. In this case no BBA has been executed. The complainants have deposited Rs.25,00,000/- against the allotted unit which is evident from the receipts annexed at page no. 22 to 24 of the complaint. Neither the project is complete, nor the respondent applied for its occupation certificate up to the date of filing of the complaint up to 20.04.2021. Even now the project is not ready, and its occupation certificate has not been applied.

Keeping in view the fact that the allottee complainants wish 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.

29. 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 1 of the project.....”*

30. 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*

31. 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.

32. 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.
33. The execution of MOU dated 04.09.2010 between the parties is not disputed which provides a provision for assured returns against the allotment of the unit. The complainants even admitted having received assured returns against the allotted unit up to March 2017. Even as per article 2 of MOU dated 04.09.2010 the respondent was liable to pay assured returns with effect from 1<sup>st</sup> October, 2010 on or before 7<sup>th</sup> day of every month for which it is due up to the first 36 months after completion of the building or till the date the said office space is put on lease, whichever is earlier.
34. 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*.



Further the amount paid by the respondent builder as assured return shall be deducted from amount of refund so assessed.

**G.3. Compensation/cost of litigation:**

35. The complainants are 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 complainants 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:**

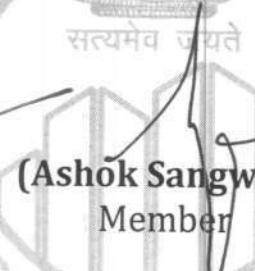
36. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act of 2016:

- i. The respondent /promoter is directed to refund the amount received by them from the complainants 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 actual date of refund of the deposited amount.



- ii. The amount received by the complainants if any by way of assured returns from the respondent as per MOU, 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.
37. Complaint stands disposed of.
38. File be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

  
(Ashok Sangwan)  
Member

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.10.2022

**HARERA**  
GURUGRAM