BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.:	**1747 of 2022**
Date of filing :	**05.05.2022**
Date of decision :	**16.02.2024**

1. Ishwar Singh Dahiya
2. Mrs. Nirmal

Both RR/o: Hno. 994, Sector 15, Sonipat, Haryana **Complainants**

Versus

M/s Landmark Apartments Private Limited
Regd. office: Landmark house, 85, Sector 44, Gurugram, Haryana **Respondent**

CORAM:
Shri Sanjeev Kumar Arora **Member**

APPEARANCE:
Shri. Sandeep Choudhary (Advovate) Complainants
Shri. Amarjeet Kumar (Advocate) Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees 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 allottees 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. N.	Particulars	Details
1.	Name of the project	"Landmark Corporate Center", at Landmark Cyber Park, Sector 67, Gurugram, Haryana
2.	DTCP	97 of 2008 dated 12.05.2008
3.	RERA Registered/ not registered	Registered vide no. 61 of 2019 dated 25.11.2019
4.	Unit no.	Virtual space (Page 30 of complaint)
5.	Unit area admeasuring	1000 sq. ft. (Page 30 of complaint)
6.	Date of execution of agreement to sell	Not executed
7.	Date of execution of MOU	16.07.2008 [Page 29 of the complaint]
8.	Assured Return Clause	*4.* *That the first party will pay ₹ 44,000/- as an assured return per month payable quarterly to second party till date of possession or 3 years*
9.	Due date of possession	16.07.2011

		[Note: calculated 3 years from the date of MoU as per fortune judgement]
10.	Total sale consideration	₹ 51,50,000 /- (Page 30 of the complaint)
11.	Amount paid by the complainant	₹ 51,50,000 /- (Page 14 of the complaint)
12.	Occupation certificate	26.12.2018 (Page 28 of reply)
13.	Offer of possession	08.06.2015 (Page 27 of reply) 19.09.2019 (as per the document provided by the counsel of respondent along with the postal receipt during the court proceedings dated 01.12.2023)
14.	Legal notice to pay assured return till possession and thereafter lease rentals (through mail)	26.02.2018 (pg. 38 of compliant)
15.	Amount paid by respondent as assured return	₹ 23,11,848/- (Page 25A of reply)

B. Facts of the complaint

3. The complainants have made the following submissions: -

   a. That the respondent company through their agents and representatives in the month of July 2008 approached the complainants and represented that the respondent is a trusted real estate developer who carries on business in a very ethical

manner and complies with all contractual obligations in a timely manner and conducts business in compliance with Government rules and regulations and that respondent company is coming up with a project in the name and style of **Landmark Cyber Park**, in Sector 67, Gurgaon and that respondent have in place complete approvals and licenses and that respondent shall deliver the possession of the project within 36 months and that respondent shall provide an assured return @ 12% on the sale consideration till the project is complete and provide assured rentals for a period of 09 years from the date of possession @ Rs. 55 per sq. ft. with increase of 15% every 3 years.

b. That believing in the representations of the representatives of the respondent company to be true and correct, complainants, being old and retired persons hoping to have a regular source of income for themselves in the old age, agreed to purchase 1000 sq. ft. of area for a basic consideration price of Rs. 5150/- per sq. ft. in the said project of the respondent under the down payment plan and paid an amount of Rs. 40,50,000/- being 80% of the basic consideration price on 12.07.2008 vide respective cheques and against properly executed receipts and upon such payments the respondent specifically agreed to pay an amount of 12% annual return for three years or till possession.

c. That accordingly, respondent executed a Memorandum of Understanding dated 16.07.2008, with complainants, wherein respondent agreed to allot a super area of 1000 sq ft in your said project for a total sale consideration of Rs. 51,50,000/-. And further agreed to pay Rs. 44,000/- as an assured return per

month payable quarterly and the date of possession to complainants. Further, complainants agreed to give leasing right for 9 years to respondent after possession. And the rentals for the period were agreed to be Rs. 55 per sq ft for the initial 3 years which were to appreciate @15% after every three years.

d. Thereby, it was agreed between respondent and complainants that they shall be allotted a super area of 1000 sq ft in your said project for a total sale consideration of Rs. 51,50,000/-, and complainants were to get the assured returns till the date of possession and after possession complainants were to get the rentals as agreed for a period of 9 years.

e. However, respondent miserably failed to honour your obligations as agreed whereas complainants had throughout been ready and willing to perform their part and complainants on call of the respondent even paid the balance sale consideration of Rs. 11,00,000/- on 01.09.2011. Thereby, complainants paid the entire sale consideration agreed for the space admeasuring 1000 sq ft as agreed to be transferred. And hence complainants became eligible for the assured returns as per the payment of sale consideration @12 % till date of possession and thereafter for the lease rentals at the rate of Rs. 55 per sq ft per month to be increased by 15% every three years.

f. However, respondent firstly, did not deliver the project as per their assurances and deliberately and illegally had the project beyond reasonable time and even after 13 years of execution of the agreements respondent has not delivered the possession of the said unit, more to the agony of complainants, respondent

company had not discharged its obligation of payment of assured returns and only paid an amount of Rs. 25,44,080/- till 1.03.2013 and thereafter no payments have been made to complainants despite complainants paying the complete sale consideration very much in advance. And as on 31.03.2022 an amount of **Rs. 39,44,920/-** is due and payable against the respondent on account of assured returns.

g. That, complainants regularly kept on asking for accounts of the payments being made by respondent as the same were not as for the agreed terms, but respondent kept on assuring that respondent shall account for the complete payments at the time of possession and if at all any shortcomings are found respondent shall appropriate the same in the final payments. And since 2013 complainants have been regularly following up with respondent and asking as to when the possession will be delivered and about the assured return payments. But to no avail as the representatives have throughout been giving only empty assurances to complainants that respondent's project is nearing possession and internal jobs are being done in the project and that respondent shall appropriate complete payments at the time of possession. Thereby respondent has ignored the requests and follow-ups and the complainants not having any authority against the superior position and economic might, were finally constrained to initiate a legal notice dated 26.02.2016 through post as well as email.

h. That, non-performance of the obligations in delivering the possession in a timely manner as agreed and even after more

than 13 years of agreements and non-payment of the returns as assured clearly amounts default and failure to comply the agreed obligations on the part of the respondent and respondent has been illegally using its superior position to cause wrongful gains to itself and wrongful losses to complainants. Such a practice clearly amounts to an unfair trade practice and the deficiency in services to complainants is very much lit large and failure to abide by the agreed terms and breach of the duties u/s 11(4)(a) & 18 of the Act which are very much enforceable by the directions of the authority under Section 37 and 38 of the Act. Hence this complaint.

i. That prior to filing of the present complaint the complainants filed an Application bearing no. 2305/2018 before the Permanent Lok Adalat – PUS, Gurugram, however, the same has been withdrawn with liberty to file fresh case as per law vide Order dated 5.04.2022.

j. That pertinent to note that during the proceedings before the PLA-PUS, Gurugram the respondent stated that the project has received Occupation certificate and admitted the agreement between the parties, however, the respondent illegally and wrongfully claimed that they were only to pay the assured returns till 3 years and that they have already paid for more than 3 years and that there are dues pending against the complainants.

k. That the respondent thereby deliberately and intentionally kept the complainants in lurch in not having executed a formal

Builder Buyer Agreement nor a formal allotment letter qua the unit allotted and to be transferred to the complainants.

l. That further there are neither any dues pending nor did the respondent ever offer clear possession to the complainants and instead the respondent seem to be only playing with words to gain wrongfully after having trapped the old and retired complainants. In any case the complainants shall be duty bound to pay the bona fide dues if at all the authority comes to the conclusion that the complainants are to pay any further dues.

m. That no other case has ever been filed by the applicant regarding the above cause of action in any court in India and there are no pending proceedings of any nature between the parties and the present application is very much maintainable.

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

4. The complainants have sought following relief:

a. To direct the respondent to convey and transfer separate and exclusive possession and ownership of the property admeasuring 1000 sq. ft. of carpet area agreed to be sold in the project named landmark cyber park, sector 67, Gurugram in favour of complainants by execution and registration of conveyance deed in a time bound manner.

b. To direct the respondent to pay assured return @12% p.a. on ₹ 40,50,000/- paid on 12.07.2008 and another ₹ 11,00,000/- paid on 01.09.2011, from date of payment till actual possession of the unit.

c. To direct the respondent to pay lease rent for a period of 9 years from the date of possession @₹ 55 per sq. ft. with increase of 15% after every 3 years as agreed between the parties.

D. Reply filed by the respondent:

5. The respondent has contested the complaint on the following grounds:

a. That present reply on behalf of respondent no.1 is being filed by Jatin Sharma, who is authorized signatory of respondent and has been authorized vide board resolution dated 23rd June 2022 to institute, sign, file and verify the present reply, sign affidavit/ applications, execute vakalatnama in favour of advocates, depose in the court, compound/ compromise the matter and to do all other acts which are necessary for the just decision of the present complaint.

b. That complainant booked a unit in a project developed by the respondent by the name "LANDMARK CYBER PARK" situated in Sector 67 Gurugram. That one of the offers made by the respondent at that point of time was that the unit will have a benefit of assured return for a period till the physical possession is handed over to the buyer. Thereafter the complainant entered into the MoU dated 16.07.2008 with the respondents determining all the rights and liabilities of the parties.

c. That the complainant as per the terms of the MoU made payments of Rs. 51,00,000/- towards the basic sale price to the respondent. However in addition to the above the complainant was also supposed to make other payments in the nature of EDC/IDC, IFMS and advance maintenance charges etc. That it is

pertinent to mention here that the complainant has been enjoying the benefit of assured return ever since the booking but when the respondent claimed for the statutory dues i.e. EDC/IDC, IFMS and advance maintenance charges for 3 years, the complainant went on a silent mode and thereby neglected payment of statutory dues.

d. That as per the terms of the **MoU**, it was specifically agreed that the Respondent will pay a sum of ₹ 44,000/- every month as assured return, payable quarterly **till the date of possession or 3 years .** That clause 4 of the MoU clearly described the liability of the respondent to pay the assured return till the date of possession or 3 years. Thus, as per the terms of the MoU, the respondent was liable to pay the complainant assured return only for 3 year.

e. The respondent and complainant out of their freewill agreed upon the term and condition of the MoU by which assured return is only required to be paid till the date of possession or 3 years. It is pertinent to note here that the said offer of possession was duly intimated to the complainant vide letter dated 8th June 2015. As such there was no time limit provided under the MoU for handing over the possession of the unit since the unit was sold on an assured return plan.

f. That as per the MoU, the complainant was paid the assured returns from October 2008 till October 2011 to a tune of **₹14,20,848/-** after deducting tax as per the MoU, but the complainant was also paid excess assured returns from October 2011 to January 2013 to a tune of **₹ 8,91,000/-** after deducting

tax. That thereafter in the month of June 2015 all the allottees of the respondent were duly informed through different means that since as per the terms of the MoU, the allottees are liable to make the payment of EDC/IDC/IFMS and other statutory charges, the assured returns cheque are kept on hold and shall be paid at the time of possession.

g. That the respondent after applying the OC accordingly informed the tentative date of receiving the OC to all its buyers including the complainant vide letter dated 8th June, 2015. It is submitted that in the said letter of intimation of possession dated 8th June, 2015 never confirmed the date of date of receiving the occupation certificate; rather the respondent stated that the occupation certificate is expected to be received within next three months. That since the building was complete in all respects; the respondent expected the OC to be received within a period of 3 months and accordingly also requested the complainant to clear all the pending dues of EDC and IDC.

h. That despite the said intimation the complainant failed to make any payments as per the agreed term. That it is pertinent to mention here that since the respondent had applied for the OC and since there was no objections raised by the competent authorities, a deemed OC was already existing in favor of the respondent. That however the issue of delay in handing over the possession is not applicable in the present case, since there was no time limit provided under the MOU and time was never made an essence of the contract.

i. That from the above list of dates and events it becomes quite evident that the respondents have already applied for grant of OC on 17th April 2015 when the building was complete in all respect and based on the application occupation certificate was granted on 26.12.2018. That it is pertinent to mention here that the occupation certificate was applied even before the notification of the RERA and thus even before section 3 of the RERA came into force and thus the present project is out of the scope of RERA jurisdiction.

j. That the complainant is praying for the relief of "Assured Returns" as one of the reliefs, which is beyond the jurisdiction of this Ld. Authority. That from the bare perusal of the RERA Act, it is clear that the said Act provides for three kinds of remedies in case of any dispute between a developer and allottee with respect to the development of the project as per the agreement. That such remedies are provided under Section 18 of the RERA Act, 2016 for violation of any provision of the RERA Act, 2016. That the said remedies are of "Refund" in case the allottee wants to withdraw from the project and the other being "interest for delay of every month" in case the allottee wants to continue in the project and the last one is for compensation for the loss occurred by the allottee. That it is relevant to mention here that nowhere in the said provision the Ld. Authority has been dressed with jurisdiction to grant "Assured Returns".

k. It is further submitted that the legislature never intended to make the provisions of the Act effective retrospectively and retroactively applicable to cover the units already sold prior to

the commencement of the Act. The legislature never intended to apply the provisions of the Act to the already sold/allotted apartments. The existing memorandum of understanding executed between the respondent and the complainant of an ongoing project has neither been invalidated nor amended nor supplemented in any manner. It is but natural that any dispute qua the allotted units prior to the commencement of the Act will be governed by the terms and conditions of the existing agreement.

l. It is further submitted that the provisions of the Act have only prospective operation, especially when it inter alia seeks to impose new burden. It is submitted that it is well settled law that a statute shall operate prospectively unless retrospective operation is clearly made out in the language of the statute. Thus, the provisions of the Act cannot be made applicable.

m. It is submitted that the respondent company in compliance of its obligations paid assured returns to the tune of **₹ 14,20,848/-** for 13 quarters and also the respondent company has paid **₹ 8,91,000/-** for 5 quarters in excess and the said amounts have been accepted by the complainants without any demur. That the complainant has approached the hon'ble authority after a period of more than 9 years for the alleged recovery of assured return. It is submitted that the complainant was paid assured returns as per the terms of MoU even more than what has been agreed upon. That without prejudice to rights and submission, it is humbly submitted that the alleged cause of action if any, arose in the year 2013 and the complainants should have approached

the court/appropriate authority within three years. It is submitted that the present complaint is nothing but an afterthought to unjustly enrich herself and the said complaint is liable to be dismissed at the very threshold as the same is barred by limitation.

6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the complainants.

E. Jurisdiction of the authority

7. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E. I Territorial jurisdiction

8. 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

9. 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 allottee as per the agreement for sale, or to the association of allottee, as the case*

may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottee and the real estate agents under this Act and the rules and regulations made thereunder."

10. So, in view of the provisions of the Act of 2016 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. I. Objection regarding jurisdiction of authority w.r.t. MoU executed prior to coming into force of the Act

11. An objection is raised by the respondent that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the MoU executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said

contention has been upheld in the landmark judgment of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)*** decided on 06.12.2017 and which provides as under:

> *"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter......*
> *122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*

12. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***,in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed:

> *"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and <u>will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion</u>. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored"*

13. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that

the agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

F.II. Objection regarding complaint being barred by limitation.

14. On consideration of the documents available on record and submissions made by the party, the authority observes that the MoU w.r.t. unit was executed with the original allottee on 16.07.2008. Since in the present matter no clause w.r.t. possession has been incorporated in the MoU executed between the parties therefore the due date of possession cannot be ascertained. A considerate view has already been taken by the Hon'ble Supreme Court in the cases where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration. It was held in matter ***Fortune Infrastructure v. Trevor d' lima (2018) 5 SCC 442 : (2018) 3 SCC (civ) 1*** and then was reiterated in ***Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725.*** Accordingly, the possession of the subject unit was to be offered till 16.07.2011. However, the subject unit was offered to the complainant on 19.09.2019 after obtaining OC from the competent authority.

15. So, limitation if any, for a cause of action would accrue to the complainants w.e.f. 19.09.2019. The present complaint seeking possession and assured return was filed on 05.05.2022 i.e., within three years w.e.f. 19.09.2019. Therefore, the complaint is maintainable and not barred by limitation.

G. Findings regarding relief sought by the complainants.

G.I To direct the respondent to convey and transfer separate and exclusive possession and ownership of the property admeasuring 1000 sq. ft. of carpet area agreed to be sold in the project named landmark cyber park, sector 67, Gurugram in favour of complainants by execution and registration of conveyance deed in a time bound manner.

16. The respondent has offered the possession of the unit on 08.06.2015 thereafter on 19.09.2019 after receiving the occupation certificate dated 26.12.2018 from the competent authority.

Validity of offer of possession

17. At this stage, the authority would express its views regarding the concept of 'valid offer of possession'. It is necessary to clarify this concept because after valid and lawful offer of possession liability of promoter for delayed offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, liability of promoter continues till a valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The authority after detailed consideration of the matter has arrived at the conclusion that a valid offer of possession must have following components:

i. **Possession must be offered after obtaining occupation certificate-** The subject unit after its completion should have received occupation certificate from the department concerned

certifying that all basic infrastructural facilities have been laid and are operational. Such infrastructural facilities include water supply, sewerage system, storm water drainage, electricity supply, roads and street lighting.

ii. **The subject unit should be in habitable condition-** The test of habitability is that the allottee should be able to live in the subject unit within 30 days of the offer of possession after carrying out basic cleaning works and getting electricity, water and sewer connections etc from the relevant authorities. In a habitable unit all the common facilities like lifts, stairs, lobbies, etc should be functional or capable of being made functional within 30 days after completing prescribed formalities. The authority is further of the view that minor defects like little gaps in the windows or minor cracks in some of the tiles, or chipping plaster or chipping paint at some places or improper functioning of drawers of kitchen or cupboards etc. are minor defects which do not render unit uninhabitable. Such minor defects can be rectified later at the cost of the developers. The allottees should accept possession of the subject unit with such minor defects under protest. This authority will award suitable relief for rectification of minor defects after taking over of possession under protest.

However, if the subject unit is not habitable at all because the plastering work is yet to be done, flooring works is yet to be done, common services like lift etc. are non-operational, infrastructural facilities are non-operational then the subject unit shall be deemed as uninhabitable and offer of possession of an uninhabitable unit will not be considered a legally valid offer of possession.

iii. **Possession should not be accompanied by unreasonable additional demands-** In several cases additional demands are made and sent along with the offer of possession. Such additional demands could be unreasonable which puts heavy burden upon the allottees. An offer accompanied with unreasonable demands beyond the scope of provisions of agreement should be termed an invalid offer of possession. Unreasonable demands itself would make an offer unsustainable in the eyes of law. The authority is of the view that if respondent has raised additional demands, the allottees should accept possession under protest

18. In the present complaint the offer was made to the complainants in consonance of the above mentioned three pre requisites for making offer of possession therefore, the offer dated 19.09.2019 will be considered a legally valid offer of possession. Since as per the MoU dated 16.07.2008 the virtual space of 1000 sq. ft. was to be delivered and not the physical possession accordingly, no direction w.r.t. the actual physical possession shall be given by the authority.

G.II. To direct the respondent to pay assured return @12% p.a. on ₹ 40,50,000/- paid on 12.07.2008 and another ₹ 11,00,000/- paid on 01.09.2011, from date of payment till actual possession of the unit.

19. The complainants in the present matter are seeking assured return as per MoU dated 16.07.2008, vide clause 4 of the MOU the respondent company agreed to pay a monthly investment return of ₹44,000/- per month payable quarterly to the complainants till the date of possession of the said property or three years. The relevant clause is produced for the ready reference:

> *"That the first party will pay ₹ 44,000/- as a assured return per month payable quarterly to second party till the date of possession or 3 years."*

20. It is pleaded that the respondent has not complied with the terms and conditions of the agreement and the MOU. Though for some time, i.e., till January 2013 the assured return were paid by the respondent as admitted by the respondent in its reply.

21. In the present matter the authority observes that since the language of clause 4 is vague w.r.t. the date till which the assured return is to be given therefore, the authority interprets that the assured return was to be given till three years or date of possession whichever is earlier. In the instant matter the respondent has already paid the assured return of ₹ 23,11,848/- till January 2013. Accordingly, the respondent is not liable to pay the assured return as agreed by both the parties vide clause 4 of the MoU dated 16.07.2008.

G.III. To direct the respondent to pay lease rent for a period of 9 years from the date of possession @₹ 55 per sq. ft. with increase of 15% after every 3 years as agreed between the parties.

22. The complainants in the present matter are seeking lease rent as per MoU dated 16.07.2008, vide clause 5 of the MOU the respondent company agreed to pay ₹55/- per sq. ft. as rent to the complainants for 9 years. The relevant clause is produced for the ready reference:

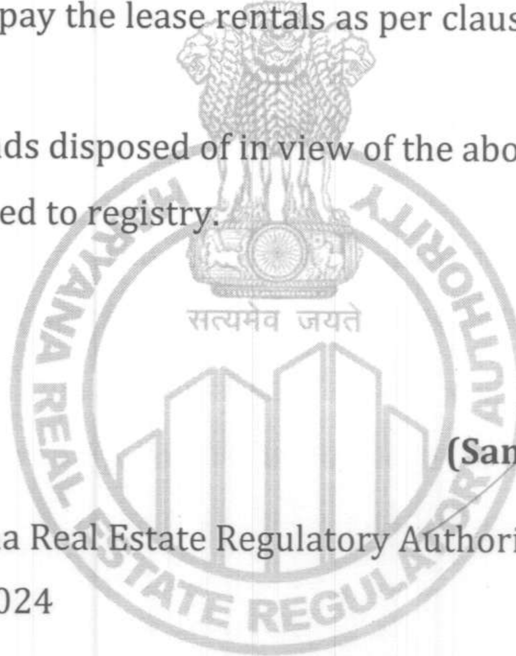
> *"That the second party has agreed to give leasing right for 9 years to the first party after possession. The first leasing right of the above said property will be with first party for locking period which is 9 years. First party will pay ₹55/- per sq. ft. as rent to the second party for 9 years. Rent will appreciate 15% after every 3 years."*

23. It is pleaded that the respondent has not complied with the terms and conditions of the agreement and the MOU. In the present matter the authority observes that the respondent had the first right of denial for putting the said unit on lease but the complainant had never sent

any request either through mail or the letter for putting the said unit on lease although the said unit was offered by the respondent after obtaining OC from the competent authority. Also, there is no document on record to substantiate that the said property is leased out as on date. Therefore, in absence of any document to corroborate the fact that the complainant requested the respondent for putting the said unit on lease the authority is of the view that the respondent is not liable to pay the lease rentals as per clause 5 of the MoU dated 16.07.2008.

24. Complaint stands disposed of in view of the above findings.

25. File be consigned to registry.



(Sanjeev Kumar Arora)
Member
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.02.2024

HARERA
GURUGRAM