

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

**Date of decision: 01.03.2024**

NAME OF THE BUILDER		M/S PARSVNATH DEVELOPERS LIMITED M/s TITAN INFRACON LLP	
PROJECT NAME		PARSVNATH TECHNICA	
S. No.	Case No.	Case title	Appearance
1	CR/6685/2022	Arman Kapoor V/s M/S Parsvnath Developers Limited and Titan Infracon LLP	Sh. M.K Dang Sh. Deeptanshu Jain Ms. Ankur Berry
2	CR/6684/2022	Arman Kapoor V/s M/S Parsvnath Developers Limited and Titan Infracon LLP	Sh. M.K Dang Sh. Deeptanshu Jain Ms. Ankur Berry
3	CR/6829/2022	Arman Kapoor V/s M/S Parsvnath Developers Limited and Titan Infracon LLP	Sh. M.K Dang Sh. Deeptanshu Jain Ms. Ankur Berry
4	CR/6679/2022	Arman Kapoor V/s M/S Parsvnath Developers Limited and Titan Infracon LLP	Sh. M.K Dang Sh. Deeptanshu Jain Ms. Ankur Berry
5	CR/6682/2022	Arman Kapoor V/s M/S Parsvnath Developers Limited and Titan Infracon LLP	Sh. M.K Dang Sh. Deeptanshu Jain Ms. Ankur Berry
6	CR/6682/2022	Arman Kapoor V/s M/S Parsvnath Developers Limited and Titan Infracon LLP	Sh. M.K Dang Sh. Deeptanshu Jain Ms. Ankur Berry

**CORAM:**

Shri Sanjeev Kumar Arora

**Member**

**ORDER**

1. This order shall dispose of the 6 complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and

Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

- The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, Parsvnath Technica situated at Sector-48, Gurugram being developed by the same respondent/promoter i.e., M/s Parsvnath Developers Pvt. Ltd. The terms and conditions of the buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter seeking possession of unit along with delay compensation charges as well as monthly returns till actual handing over of possession.
- The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

<b>Project Name and Location</b>	"Parsvnath Technica" at sector 104, Gurgaon, Haryana.
<b>Project area</b>	9.3 acres
<b>DTCP License No.</b>	47 of 2008 dated 11.03.2008 valid upto 10.03.2020
<b>Name of Licensee</b>	M/s Dharmender - Karambir & 3 others
<b>Licensed Area</b>	6.45 acres
<b>RERA Registration</b>	Not Registered (Planning Branch is directed to initiate suo moto proceedings. )
<b>Possession Clause: Not mentioned</b>	

**Assured Return Clause: Clause 1 of the addendum to flat buyer agreement**

**CR/ 6685/2022:**

1. That out of the total sale consideration amount of Rs. 88,00,000 to the Purchaser has paid to the Developer an amount of Rs. 79,20,000 calculated @ Rs. 2250/- per sq. ft. of the entire super area to be allotted, before the execution of the Flat Buyer Agreement. Against the receipt of this part sale consideration of Rs. 79,20,000 the Developer shall give an investment return @ Rs. 42.50 per sq. ft. per month i.e., Rs. 1,49,600/- to the Purchaser by way of interest (subject to deduction of tax at source) w.e.f. 01.04.2014 the return shall be paid on monthly intervals supported by 6 months PDC cheques which it is due till such time the office Space are leased out by the Developer on behalf of the Purchaser.

**CR/6684/2022:**

1. That out of the total sale consideration amount of Rs. 59,00,000 to the Purchaser has paid to the Developer an amount of Rs. 53,10,000 calculated @ Rs. 2250/- per sq. ft. of the entire super area to be allotted, before the execution of the Flat Buyer Agreement. Against the receipt of this part sale consideration of Rs. 53,10,000 the Developer shall give an investment return @ Rs. 42.50 per sq. ft. per month i.e., Rs. 1,00,300/- to the Purchaser by way of interest (subject to deduction of tax at source) w.e.f. 01.04.2014 the return shall be paid on monthly intervals supported by 6 months PDC cheques which it is due till such time the office Space are leased out by the Developer on behalf of the Purchaser.

**CR/6829/2022:**

1. That out of the total sale consideration amount of Rs. 25,75,000/- the Purchaser has paid to the Developer an amount of Rs. 23,17,500 calculated @ Rs. 2250/- per sq. ft. of the entire super area to be allotted, before the execution of the Flat Buyer Agreement. Against the receipt of this part sale consideration of Rs. 23,17,500/- the Developer shall give an investment return @ Rs. 42.50 per sq. ft. per month i.e., Rs. 43,775/- to the Purchaser by way of interest (subject to deduction of tax at source) w.e.f. 01.12.2015 the return shall be paid on monthly intervals supported by 6 months PDC cheques which it is due till such time the office Space are leased out by the Developer on behalf of the Purchaser.

**CR/6679/2022:**

1. That out of the total sale consideration amount of Rs. 44,12,500 the Purchaser has paid to the Developer an amount of Rs. 39,71,250 calculated @ Rs. 2250/- per sq. ft. of the entire super area to be allotted, before the execution of the Flat Buyer Agreement. Against the receipt of this part sale consideration of Rs. 39,71,250 the Developer shall give an investment return @ Rs. 42.50 per sq. ft. per month i.e., Rs. 75,012.50/- to the Purchaser by way of interest (subject to deduction of tax at source) w.e.f. 01.04.2014 the return shall be paid on monthly intervals supported by 6 months PDC cheques which it is due till such time the office Space are leased out by the Developer on behalf of the Purchaser.

**CR/6682/2022:**

1. That out of the total sale consideration amount of Rs. 53,87,500 the Purchaser has paid to the Developer an amount of Rs. 48,48,750 calculated @ Rs. 2250/- per sq. ft. of the entire super area to be allotted, before the execution of the Flat Buyer Agreement. Against the receipt of this part sale consideration of Rs. 48,48,750 the Developer shall give an investment return @ Rs. 42.50 per sq. ft. per month i.e., Rs. 91,587.50/- to the Purchaser by way of interest (subject to deduction of tax at source) w.e.f. 01.04.2014 the return shall be paid on monthly intervals supported by 6 months PDC cheques which it is due till such time the office Space are leased out by the Developer on behalf of the Purchaser.

**CR/6683/2022**

1. That out of the total sale consideration amount of Rs. 48,00,000 the Purchaser has paid to the Developer an amount of Rs. 43,20,000 calculated @ Rs. 2250/- per sq. ft. of the entire super area to be allotted, before the execution of the Flat Buyer Agreement. Against the receipt of this part sale consideration of Rs. 43,20,000 the Developer shall give an investment return @ Rs. 42.50 per sq. ft. per month i.e., Rs. 81600.00/- to the Purchaser by way of interest (subject to deduction of tax at source) w.e.f. 01.04.2014 the return shall be paid on monthly intervals supported by 6 months PDC cheques which it is due till such time the office Space are leased out by the Developer on behalf of the Purchaser.

Sr. No	Complain t No., Case Title, and Date of filing of	Date of apartme nt buyer agreeme nt	Unit No.	Unit adme asurin g	Due date of Possessi on	Total Sale Consid eration / Total Amount	Relief Sought
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	complaint					paid by the complainant	
1.	CR/6685 /2022  Arman Kapoor V/s Parsv Nathan Developers Limited And Titan Infracon LLP  DOF: 31.10.2022  Reply Status:  R1- Not filed  R2- 07.03.2023	17.01.2014  Allotment Letter: 16.01.2014  Addendum to flat buyer agreement: 18.01.2014	557, 5 <sup>th</sup> Floor	3520 sq. ft.	17.01.2017  [Calculated as per <b>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018]</b>	TSC: - Rs. 88,00,000/-  AP: - Rs. 79,20,000/-	1. To handover physical possession. 2. To execute sale deed. 3. Delay possession charges. 4. Monthly return of Rs. 1,49,600/- per month till actual possession is handed over. 5. Arrears of monthly returns with interest

2.	CR/6684 /2022  Arman Kapoor V/s Parsvna th Develop ers Limited And Titan Infracon LLP  DOF: 31.10.20 22  Reply Status: R1- Not filed  R2- 07.03.20 23	17.01.20 14  Allotmen t Letter: 16.01.20 14  Addendu m to flat buyer agreeme nt: 17.01.20 14	556, 5 <sup>th</sup> Floor	2360 sq. ft.	17.01.20 17  [Calculat ed as per <b>Fortune                  Infrastr                  ucture                  and Ors.                  vs.                  Trevor                  D'Lima                  and Ors.                  (12.03.2                  018 -                  SC);                  MANU/S                  C/0253                  /2018]</b>	TSC: - Rs. 59,00,0 00/-  AP: - Rs. 53,10,0 00/-	1. To handov er physica l possess ion. 2. To execute sale deed. 3. Delay possess ion charges . 4. Monthl y return of Rs. 1,00,30 0/- per month till actual possess ion is handed over. 5. Arrears of monthl y returns with interest
3.	CR/6829 /2022  Arman Kapoor	05.11.20 15  Allotmen t Letter:	521, 5 <sup>th</sup> Floor	1030 sq. ft.	05.11.20 18  [Calculat ed as	TSC: - Rs. 25,75,0 00/-	1. To handov er physica l



	V/s Parsvna h Develope rs Limited And Titan Infracon LLP  <b>DOF:</b> 31.10.20 22  <b>Reply                  Status:</b> R1- Not filed  R2- 07.03.20 23	06.11.20 15  Addendu m to flat buyer agreeme nt: 05.11.20 15			per <b>Fortune                  Infrastr                  ucture                  and Ors.                  vs.                  Trevor                  D'Lima                  and Ors.                  (12.03.2                  018 -                  SC);                  MANU/S                  C/0253                  /2018]</b>	AP: - Rs. 23,17,5 00 /-	possess ion. 2. To execute sale deed. 3. Delay possess ion charges . 4. Monthl y return of Rs. 43,775 /- per month till actual possess ion is handed over. 5. Arrears of monthl y returns with interest
4.	CR/6679 /2022  Arman Kapoor V/s Parsvna h Develope	17.01.20 14  Allotmen t Letter: 16.01.20 14  Addendu m to flat	551, 5 <sup>th</sup> Floor	1765 sq. ft.	17.01.20 17  [Calculat ed as per <b>Fortune                  Infrastr                  ucture                  and Ors.</b>	TSC: - Rs. 44,12,5 00/-  AP: - Rs. 39,71,2 50 /-	1. To handov er physica l possess ion. 2. To execute

	rs Limited And Titan Infracon LLP  DOF: 31.10.20 22  Reply Status: R1- Not filed  R2- 07.03.20 23	buyer agreeme nt: 18.01.20 14			vs. <b>Trevor                  D'Lima                  and Ors.                  (12.03.2                  018 -                  SC);                  MANU/S                  C/0253                  /2018]</b>		sale deed. 3. Delay possess ion charges  4. Monthl y return of Rs. 75,012 /- per month till actual possess ion is handed over. 5. Arrears of monthl y returns with interest
5.	CR/6682 /2022  Arman Kapoor V/s Parsvnat h Develop ers Limited And Titan	17.01.20 14  Allotmen t Letter: 16.01.20 14  Addendu m to flat buyer agreeme nt:	552, 5 <sup>th</sup> Floor	2155 sq. ft.	17.01.20 17  [Calculat ed as per <b>Fortune                  Infrastr                  ucture                  and Ors.                  vs.                  Trevor                  D'Lima</b>	TSC: - Rs. 53,87,5 00/-  AP: - Rs. 48,48,7 50 /-	1. To handov er physica l possess ion. 2. To execute sale deed. 3. Delay possess ion



	Infracon LLP  <b>DOF:</b> 31.10.20 22  <b>Reply                  Status:</b> <b>R1-</b> Not filed  <b>R2-</b> 07.03.20 23	18.01.20 14			and Ors. (12.03.2 018 - SC); MANU/S C/0253 /2018]		charges . 4. Monthl y return of Rs. 91,587 /- per month till actual possess ion is handed over. 5. Arrears of monthl y returns with interest
6	CR/6683 /2022  Arman Kapoor V/s Parsvnat h Develop rs Limited And Titan Infracon LLP  <b>DOF:</b> 31.10.20 22	17.01.20 14  Allotmen t Letter: 16.01.20 14  Addendu m to flat buyer agreeme nt: 18.01.20 14	555, 5 <sup>th</sup> Floor	1920 sq. ft.	17.01.20 17  [Calculat ed as per <b>Fortune                  Infrastr                  ucture                  and Ors.                  vs.                  Trevor                  D'Lima                  and Ors.                  (12.03.2                  018 -                  SC);                  MANU/S</b>	TSC: - Rs. 48,00,0 00/-  AP: - Rs. 43,20,0 00 /-	1. To handov er physica l possess ion. 2. To execute sale deed. 3. Delay possess ion charges . 4. Monthl y return

	<b>Reply Status:</b> <b>R1- Not filed</b>  <b>R2- 15.09.2023</b>				<b>C/0253 /2018]</b>		of Rs. 81,600 /- per month till actual possession is handed over. 5. Arrears of monthly returns with interest
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**Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:**

**Abbreviation Full form**

TSC Total Sale consideration

AP Amount paid by the allottee(s)

4. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(F) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
5. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/6685/2022 Arman Kapoor V/s M/s Parsvnath Developers Limited and Titan Infracon LLP** are being taken into consideration for determining the rights of the allottee(s).

**A. Project and unit related details**

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

***CR/6685/2022 Arman Kapoor V/s M/s Parsvnath Developers Limited  
and Titan Infracon LLP***

S. N.	Particulars	Details
1.	Name of the project	"Parsvnath Technica" at sector 48, Gurgaon, Haryana
2.	Nature of the project	Commercial/IT space
3.	Project area	9.3 acres
4.	DTCP license no. and validity status	47 of 2008 dated 11.03.2008 valid till 10.03.2020
5.	Name of licensee	M/s Dharmender-Karambir & 3others
6.	Licensed area	6.45 acres
7.	RERA Registered/ not registered	Not Registered (Planning Branch is directed to initiate suo moto proceedings)
8.	Unit no.	557, 5 <sup>th</sup> Floor (as per BBA on page no. 37 of complaint)
9.	Unit area admeasuring	3520 sq. ft. (as per BBA on page no. 37 of complaint)
10.	Date of application	16.01.2014 (page no. 36 of complaint)
11.	Date of allotment letter	16.01.2014

		(page no. 27 of complaint)
12.	Date of builder buyer agreement	17.01.2014 (page no. 32 of complaint)
13.	Addendum to flat buyer agreement	18.01.2014 (page no. 61 of complaint)
14.	Letter for outstanding monthly returns by respondent	27.11.2018 (Page no. 69 of complaint)
15.	Possession Clause	Not mentioned
16.	Assured return Clause (as per addendum to flat buyer agreement)	<p>1. That out of the total sale consideration amount of Rs. 88,00,000 to the Purchaser has paid to the Developer an amount of Rs. 79,20,000 calculated @ Rs. 2250/- per sq. ft. of the entire super area to be allotted, before the execution of the Flat Buyer Agreement. Against the receipt of this part sale consideration of Rs. 79,20,000 the Developer shall give an investment return @ Rs. 42.50 per sq. ft. per month i.e., Rs. 1,49,600/- to the Purchaser by way of interest (subject to deduction of tax at source) w.e.f. 01.04.2014 the return shall be paid on monthly intervals supported by 6 months PDC cheques which it is due till such time the office Space are leased out by the Developer on behalf of the Purchaser.</p> <p>[page no. 62 of complaint]</p>
17.	Due date of possession	17.01.2017

		[Calculated as per <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i> ]
18.	Total sale consideration	Rs. 88,00,000/- (as per BBA on page no. 37 of complaint)
19.	Amount paid by the complainant	Rs. 79,20,000/- [as per BBA on page no. 37 of complaint]

### B. Facts of the complaint

The complainant has made the following submissions in the complaint: -

- That around December, 2013, the complainant received a marketing call from the office of the respondent No. 1 for booking an office space in its project namely 'Parsvnath Technica' portraying a very rosy picture of the project. Several representations with respect to the numerous world class facilities to be provided were made. Believing the said representations and relying upon the advertisements, assurances and promises in the brochures circulated by respondent No. 1 about the timely completion of a premium project with impeccable facilities and believing the same to be correct, the complainant booked office space bearing No. 557 on fifth floor in the commercial/IT park complex having super area measuring 3520 square foot being constructed under the name and style of 'Parsvnath Technica' in the revenue estate of Tikri, District Gurugram. Respondent no. 1 issued Allotment Letter dated 16.01.2014 provisionally allotting the said unit to the complainant. Respondent no. 1 also issued receipt dated 16.01.2014 confirming receipt of payment from the complainant.

8. That it is pertinent to mention here that at the time of the booking, it was represented and assured by respondent no. 1 that the said office space shall positively be completed within a period of four years from the date of the flat buyer agreement.
9. That it is pertinent to mention here that before the execution of the flat buyer agreement, the complainant paid 90% of the total sale consideration in respect of the said unit i.e. out of the total sale consideration of Rs. 88,00,000/-, the complainant paid a sum of Rs. 79,20,000/- to respondent no. 1. Simultaneously, the flat buyer agreement dated 17.01.2014 was executed between the complainant and respondent no. 1.
10. That an addendum to flat buyer agreement dated 17.01.2014 was executed between the complainant and the respondent no. 1. As per Clause 1 of the said addendum agreement, respondent no. 1 undertook to pay an investment return @ Rs. 42.50 per square foot per month i.e. Rs. 1,49,600/- to the complainant by way of interest (subject to deduction of tax at source) with effect from 01.04.2014. Furthermore, it was agreed that the return shall be paid on monthly intervals supported by six months PDC cheques which it is due till such time the office space are leased out by respondent no. 1 on behalf of the complainant.
11. That the said monthly return was to be paid by respondent no. 1 to the complainant every month. Respondent no. 1 regularly paid the monthly assured return initially upto 31.05.2016. Thereafter, respondent no. 1 stopped making payment in blatant breach of the addendum to flat buyer agreement. Despite the complainant requesting respondent no. 1 to abide by its obligations, respondent no. 1 did not pay any heed to the just demands of the complainant. After repeated requests of the complainant,



an understanding dated 27.11. 2017 was arrived at between the complainant and respondent no. 1 whereby respondent no. 1 undertook to pay an interest @ 12% per annum payable from w.e.f. 07.01.2018 on the already pending returns amounting to Rs.87,78,384/-(after TDS) for the period 01.06.2016 to 30.11.2017. Furthermore, respondent no. 1 also undertook that the further returns of December, 2017 will carry the interest in the same ratio and Rs. 4876.88 (after TDS) shall be added on monthly basis in the amount of Rs. 87,78,384/- and will be payable on 7th of every month till the total returns are paid. However, respondent no. 1 stopped paying the monthly interest @ 12% p.a. on delayed payment of investment return to the complainant from November, 2019. Moreover, respondent no. 1 has also not paid the monthly assured returns w.e.f.01.06.2016 Respondent no. 1 has miserably failed to abide by its obligations under the flat buyer agreement and addendum to the flat buyer agreement.

12. That thereafter, the complainant made several efforts to seek updates about the status of the outstanding dues of the complainant due to respondents being totally dishonest, but there was no satisfactory response from the side of respondent no. 1. As is evident, respondent no. 1 has misappropriated the hard earned money of the complainant and several other allottees.
13. That around November, 2019 when the complainant visited the site work, he was shocked to find out that the developer of the said project had changed to one M/s. Capital Developers. Upon further inquiry, the complainant found out that the landowners had conspired with respondent no. 1 and the said M/s. Capital Developers had entered into a new

collaboration agreement with the said developer. Accordingly, the complainant wrote email dated 19.11.2019 to the Director, Town and Country Planning Haryana, Chandigarh to bring to his notice that no permission/intimation had been taken from the complainant being allottee in the said project and changing of the developer without the knowledge of the complainant.

14. That it has now transpired that the intentions of the respondents have been mala fide from the very inception. With a view to cause wrongful loss to the complainant and to obtain wrongful gain, respondent no. 1 induced the complainant to sign the said flat buyer agreement and addendum to flat buyer agreement which contain several arbitrary, one sided and unfair terms and conditions knowing fully well that it had no intention to complete the project or to keep on paying the assured return to the complainant. The complainant was also shocked to find out that very cleverly, respondent no. 1 contrary to what it had represented before the complainant at the time of booking intentionally did not mention the time period for completion of office space allotted to the complainant. Respondent no. 1 has now joined hands with respondent no. 2 to somehow evade its obligations and to keep on enjoying the hard earned money of the complainant endlessly. The respondents have hatched a conspiracy to defraud simple and innocent allottees like the complainant and the respondents cannot be allowed to get away with their illegal acts.

15. That vide memo dated 07.10.2020, the complainant was informed by the District Town Planner that due to non-compliance by respondent no. 1 in the time stipulated by the Directorate of Town and Country Planning, Haryana, in principle approval regarding change of developer issued vide

office memo dated 08.11.2019 had lapsed and a fresh in principle approval had been issued to respondent no. 1 on 11.09.2020 with a condition that respondent no. 1 would invite objections regarding change in beneficial interest from the allottees through public notice.

16. That vide letter dated 03.02.2021, respondent no. 1 informed the complainant that for early completion/development of the said project, respondent no. 1 was in the process of changing beneficiary interest/joint development and marketing rights from Parsvnath Developers Limited to Titan Infracon LLP and that in principle approval for the same had been received from Director Town and Country Planning, Haryana, Chandigarh. Accordingly, the complainant vide email dated 22.02.2021 not only objected to the change in developer but also pointed out several glaring defects and deficiencies committed by respondent no. 1.
17. That the respondents have miserably failed to not only deliver the possession of the unit of the complainant but have also failed to make timely payment of the assured returns for the last several years despite the complainant having made payment amounting to 90% of the entire sale consideration of the said office space as demanded by the respondents. It is pertinent to mention here that the only aim of the respondents trying to seek change of developer is to cheat several innocent allottees like the complainant through totally false representations. Furthermore, the respondents have dishonestly misappropriated and converted to their own use the hard earned money of the complainant as well as several other allottees and have also committed gross and blatant breach of the terms and conditions of the flat buyer agreement and addendum to the flat buyer agreement.

18. That respondent no.1 has been very cleverly depositing TDS only and neither making payment of assured returns nor interest on delayed returns. Due to this reason, the complainant has been facing several issues since the last more than 5 years as even though no income is received by the complainant but liability to pay income tax arises. The demand is generated as soon as respondent no. 1 deposits TDS and files its TDS Return as the same reflects in Form 26AS of the complainant. Respondent no. 1 has been only depositing TDS since Financial Year 2016-17 without releasing any payment whatsoever against the long pending assured returns and interest on pending returns as agreed to be paid by respondent no. 1. By doing so, Respondent no.1 is able to claim the TDS deposited by it as expense in its books but unfortunately, the complainant is required to pay income tax without there being any income. Respondent no. 1 has caused immense mental as well as financial stress to the complainant.
19. That no proper response has been received by the complainant from the respondents despite making several inquiries from time to time. The respondents have failed to inform the complainant if some tenant as required has been located by the respondents in respect of the said unit or not. It has turned out that the promises of the respondents to provide the complainant with a world class project with impeccable facilities were totally false and had been made with a view to take undue advantage of the complainant. The complainant has been running from pillar to post to obtain assured returns as promised by the respondents but to no avail. The respondents have intentionally been misleading the complainant by giving total false information and assurances that they would soon handover the possession to the complainant.

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

20. The complainant has sought following relief(s):

- I. To handover the actual, physical, vacant possession of the office space no. 557, 5<sup>th</sup> floor in the above said project.
- II. Direct the respondents to execute the sale deed of the above said office space in favour of the complainant.
- III. Direct the respondents to pay delay compensation charges with interest as per Rera Act.
- IV. Direct the respondents to honour their obligation of paying the monthly return of Rs. 1,49,600 per month till the actual possession is handed over.
- V. Direct the respondents to pay arrears of monthly return from 01.06.2016 upto 30.09.2022 i.e., Rs. 1,05,46,800/- along with interest @ 18% p.a. for the period of default till the date of actual realization of said amount.
- VI. Direct the respondents to pay arrears of interest @ 12% p.a. on delayed monthly returns i.e., Rs. 27,52,085/- due as on 07.10.2022 for the period 01.11.2019 till 31.08.2022 and accumulating thereafter each month as undertaken by respondent no. 1 to the complainant vide letter dated 27.11.2017.
- VII. Direct the respondents to keep on paying the amount for use and occupation in respect of said unit in the sum of Rs. 1,76,000/- per month from the date of complaint till handing over of actual physical possession of the said unit to the complainant by respondent.
- VIII. Direct the respondents to pay a sum of Rs. 2 lakhs towards litigation cost.



21. On the date of hearing, the authority explained to the respondents/promoters about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

**D. Reply by the respondent no. 2**

22. The respondent no. 1 /promoter put in appearance through its Advocate and marked attendance on 07.03.2023, 25.08.2023, 15.09.2023 and 05.01.2024 respectively. Despite specific directions, it failed to comply with the orders of the authority. It shows that the respondent no. 1 was intentionally delaying the procedure of the court by avoiding to file written reply. Therefore, the defense of the respondent no. 1 is struck off.

23. The respondent no.2 contested the complaint by filing reply dated 07.03.2023 on the following grounds: -

24. That the builder buyer agreement has been executed between the complainant and the respondent no. 1 on 17th January, 2014 i.e., prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the Hon'ble Authority lacks jurisdiction to adjudicate upon any of the relief's as claimed by the complainant herein.

25. That the respondent no. 2 could not have been made party to the present complaint since none of the allegations as placed/levelled within the complaint, have been directed to be adjudicated against the respondent no. 2. Respondent No. 2 is liable to be deleted from the array of parties in the present complaint. That from the bare perusal of the complaint, it is ample clear that there are no specific allegations or averments made against the respondent no. 2 and therefore the respondent no. 2 deserves to be deleted from the array of parties for not being a necessary or proper party to the present complaint.



26. That the present complaint is not maintainable against the respondent no. 2, as no real cause of action has either been pleaded or exists against the respondent no. 2 and the present complaint is motivated to pressurise the respondent no. 2 without any basis or cause of action.
27. That an allotment letter was issued to complainant by the respondent no. 1 on 16.01.2014 in the IT Park Colony being developed by respondent no.1 at the relevant point in time i.e., in the year 2014, on land admeasuring 6.445 acres situated in Tikri, Tehsil and District Gurugram (hereinafter referred to as "said project").
28. Further as per the admissions of the complainant, the payments were made by the complainant for the purchase of the office unit to the respondent no. 1 and the receipt for the said payments were also given by respondent no.1. It be kindly noted that the respondent no. 2 was not involved in any manner with the transactions qua the unit. That even the addendum for investment returns, as alleged by the complainant, has been entered into between the complainant and the respondent no. 1 only and the respondent no. 2 was never a party to the any of the sale, purchase or transactions with the complainant as has been mentioned by the complainant in his complaint. In view of the aforesaid, no cause of action, whatsoever is made out against the respondent no. 2.
29. That the complainant has not levelled any allegations or submissions with regard to the complainant approaching the respondent no. 2 at any point in time. That there is no relationship of promoter and allottee between the respondent no. 2 and the complainant within the meaning of the Real Estate (Regulation and Development) Act, 2016 and as such the present complaint

is liable to be dismissed and the respondent no. 2 be removed from array of parties.

30. That further the complainant has explicitly admitted and reproduced builder buyer agreement, which has been executed between the complainant and respondent no. 1. That the terms and conditions of the agreement between the complainant and respondent no. 1, even if breached by either of the parties cannot be held to make the answering respondent, being respondent no. 2 liable. That respondent no. 2 has been wrongly impleaded as party to the present litigation. There is absolutely no privity of contract between the complainant and respondent no. 2. Moreover, the BBA had been executed between the complainant and respondent no.1 way back in the year 2014 much before the respondent no. 2 had been involved with the project in question. The transaction of sale of the commercial unit in the project in question had also not been negotiated directly between the complainant and respondent no 2. Consequently, the institution and prosecution of the present complaint against respondent no 2 is completely misconceived and is factually and legally unsustainable both in law and on facts.
31. That in 2021 when the respondent no. 1 was unable to complete the development of the project, the respondent no. 2 was brought in through development agreement dated 15.02.2021. That vide clause 9.4 of the development agreement dated 15.02.2021, the respondent no. 1 indemnified the respondent no. 2 from all liability for any third-party liability including but not limited to the existing clients/allottees/buyers relating to the period till the execution of the development agreement. The respondent no. 2 prays to this Hon'ble Authority, that as and when directed

the said development agreement would be placed on record for the perusal of this Hon'ble Authority.

32. That the occupation certificate for the tower-A of the project has already been received on 19.01.2022 and thus no liability under the present complaint can be adjudicated against the respondent no. 2, hence the answering respondent ought to be removed from the array of parties.
33. That further the relief of possession, interest and compensation has been sought by the complainant and the claims as raised in the complaint can legally be ordered only against respondent no. 1 holding it responsible for breach of BBA/Addendum/any other documents upon which claim of the complainant is based, without casting any liability on respondent no. 2.
34. That the complainant has no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of Real Estate (Regulation and Development) Act, 2016. It is evident from the entire sequence of events, that no illegality can be attributed to respondent no 2. The allegations levelled by the complainant are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.
35. 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 submission made by the parties.

**E. Jurisdiction of the authority**

36. 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**

37. 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**

38. 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) The promoter shall-**

*(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.*

39. 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 no.2.**

**F.1. Objection regarding maintainability of complaint against respondent no.2.**

40. The respondent no.2 vide its reply dated 07.03.2023 contented that it is not concerned with the relief in the present complaint as it is not a party in the said MoUs. However, as per record available the Director, Town and Country Planning, Haryana vide its order dated 19.05.2021 allowed the request for change in beneficial interest/joint development and marketing rights under policy dated 18.02.2015 by granting licence in its favour and made it liable for compliance of all terms and conditions of the Act 1975 & Rules 1976 till granting of the completion certificate. Therefore, respondent no.2 cannot escape from its responsibilities and obligations to the allottees being licensee of the project and is covered under the definition of promoter within the meaning of 2(zk)(i),(v).
41. Promoter has been defined in section 2(zk) of the Act. The relevant portion of this section reads as under: -

*"2. Definitions — In this Act, unless the context otherwise requires —*  
*(zk) "promoter" means, —*  
*(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*  
*(ii) xxx*  
*(iii) xxx*  
*(iv) xxx*  
*(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale;"*



42. Further, clause 1.3, clause 4 and clause 23.1 of the development agreement dated 15.02.2021, the respondent no.2 agreed to take over the development and competition of the project as well as handing over of possession after obtaining completion certificate from the concerned authorities. Also, vide clause 2 of the general power of attorney dated 15.02.2021, it was agreed that the respondent no.2 will execute and sign sale deeds, indentures, deed of transfer etc. of its area in favour of the prospective allottee(s)/buyers.
43. Also, several parameters are prescribed in policy dated 18.02.2015 for making change in beneficial interest, change in developer, assignment of joint development right/marketing rights etc. Relevant portion of it is reproduced as under.

**4.1. EXAMINATION OF SUCH REQUEST UNDER THE POLICY:**

*"All such requests received by the DGTCP under this policy shall be examined on merits and depending upon the nature of request, the DGTCP may direct the applicant/the new entity to furnish/comply with some or all of the following requirements, as applicable, in a period not exceeding ninety days:*

*i) Fresh Agreement LC-IV, Bilateral Agreement to be executed on behalf of the new entity and bank guarantees to be furnished by the bank on behalf of the new entity against internal development works and external development charges.*

*ii) An undertaking to abide by the provisions of Act/Rules and all the directions that may be given by the DGTCP in connection with the above said licenses.*

*iii) A demand draft for the balance 60% of the applicable administrative charges calculated at the rates prescribed under para 3.0 above.*

*iv) Registered Collaboration agreement between the proposed Developer and land-owning individuals/entities.*

*v) Clear the outstanding EDC/IDC dues, as specifically directed by the DGTCP.*

*vi) In projects where third-party rights stand created, objections regarding change in Developer shall be invited from the allottees through public notice as well as notice under registered cover, as per the detailed procedures and proforma prescribed by the DGTCP.*

*vii) An undertaking to settle all the pending/outstanding issues, if any, in respect of all the existing as well as prospective allottees.*



viii) An undertaking to be liable to pay all outstanding dues on account of EDC and interest thereon, if any, in future, as directed by the DGTCP.

ix) An undertaking that all the liabilities of the existing Developer shall be owned by new entity.

x) Original licences and schedule of land.

xi) An undertaking that notwithstanding the assignment of joint development rights and/or marketing rights to a third-party agency, for either entire or part of the colony, the Developer shall continue to be solely responsible for compliance of provisions of the Act/Rules as well as terms and conditions of the licence (applicable in case of assignment of joint development rights and/or marketing rights)."

44. Therefore, as per the aforesaid facts and provisions of law, respondent no. 1 & 2 will be jointly and severally liable for the completion of project as well as other liabilities towards the complainant. Hence, the contention/objection of respondent no.2 stands rejected.

**G. Findings on the relief sought by the complainant**

- I. **To handover the actual, physical, vacant possession of the office space no. 557, 5<sup>th</sup> floor in the above said project.**
- II. **Direct the respondents to execute the sale deed of the above said office space in favour of the complainant.**

45. There is nothing on the record to show that the respondents have applied for CC/part CC or what is the status of the development of the above-mentioned project. Hence, the respondents are directed to deliver the possession on payment of outstanding dues if any and to execute the sale deed in favour of the complainant on payment of stamp duty and registration charges within 60 days after obtaining Occupation Certificate from the competent authority.

- III. **Direct the respondents to pay delay compensation charges with interest as per Rera Act.**

- IV. Direct the respondents to honour their obligation of paying the monthly return of Rs. 1,49,600 per month till the actual possession is handed over.
- V. Direct the respondents to pay arrears of monthly return from 01.06.2016 upto 30.09.2022 i.e., Rs. 1,05,46,800/- along with interest @ 18% p.a. for the period of default till the date of actual realization of said amount.
- VI. Direct the respondents to pay arrears of interest @ 12% p.a. on delayed monthly returns i.e., Rs. 27,52,085/- due as on 07.10.2022 for the period 01.11.2019 till 31.08.2022 and accumulating thereafter each month as undertaken by respondent no. 1 to the complainant vide letter dated 27.11.2017.
- VII. Direct the respondents to keep on paying the amount for use and occupation in respect of said unit in the sum of Rs. 1,76,000/- per month from the date of complaint till handing over of actual physical possession of the said unit to the complainant by respondents.
46. All the above-mentioned reliefs are interrelated accordingly, the same are being taken up together for adjudication. The complainant has sought delay possession charges and has also sought assured returns on monthly basis as per clause 1 of the addendum to flat buyer agreement till the date of office space is leased out along with interest at prescribed rate as well as arrears of assured return with interest.
47. The complainant booked a unit in the project of respondents and the allotment letter was issued on 16.01.2014. Thereafter the builder buyer

- agreement for the said unit was executed on 17.01.2014. The total sale consideration of the unit is Rs. 88,00,000/- out of which the complainant has made a payment of payment of Rs. 79,20,000/-.
48. It is pleaded that the respondents has not complied with the terms and conditions of the agreement. Though for some time, the amount of assured returns was paid but later on, the respondents refused to pay the same. The complainant has sought assured return on monthly basis as per one of the provisions of addendum to builder buyer agreement dated 17.01.2014 at the agreed rates. It was pleaded by the complainant that the respondents has paid a monthly return till 31.05.2016 and thereafter stopped to make payment. Further an MOU was executed between the complainant and the respondents dated 27.11.2018 wherein it was decided that pending returns upto November 2017 of Rs. 87,78,384/- (Rs. 14,63,064/- per unit) will be given with an interest of 12% p.a. by 07<sup>th</sup> January 2018 subject to deduction of TDS.
49. Further it was decided that from December 2017 onwards the monthly returns will carry the interest in same ratio and an amount of Rs. 4876.88 will be added on monthly basis in the amount of Rs. 87,783.834/-.
50. The Act of 2016 defines "agreement for sale" means an agreement entered into between the promoter and the allottee [Section 2(c)]. An agreement for sale is defined as an arrangement entered between the promoter and allottee with freewill and consent of both the parties. An agreement defines the rights and liabilities of both the parties i.e., promoter and the allottee and marks the start of new contractual relationship between them. This contractual relationship gives rise to future agreements and transactions between them. The different kinds of payment plans were in vogue and legal

within the meaning of the agreement for sale. One of the integral part of this agreement is the transaction of assured return inter-se parties. The "agreement for sale" after coming into force of this Act (i.e., Act of 2016) shall be in the prescribed form as per rules but this Act of 2016 does not rewrite the "agreement" entered between promoter and allottee prior to coming into force of the Act as held by the Hon'ble Bombay High Court in case *Neelkamal Realtors Suburban Private Limited and Anr. v/s Union of India & Ors., (Writ Petition No. 2737 of 2017) decided on 06.12.2017*. Since the agreement defines the buyer-promoter relationship therefore, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship. Therefore, it can be said that the real estate regulatory authority has complete jurisdiction to deal with assured return cases as the contractual relationship arise out of agreement for sale only and between the same parties as per the provisions of section 11(4)(a) of the Act of 2016 which provides that the promoter would be responsible for all the obligations under the Act as per the agreement for sale till the execution of conveyance deed of the unit in favour of the allottee. Now, three issues arise for consideration as to:

- i. Whether the authority is within its jurisdiction to vary its earlier stand regarding assured returns due to changed facts and circumstances.
  - ii. Whether the authority is competent to allow assured returns to the allottee in pre-RERA cases, after the Act of 2016 came into operation,
  - iii. Whether the Act of 2019 bars payment of assured returns to the allottee in pre-RERA cases
51. While taking up the cases of *Brhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd.* (complaint no 141 of 2018), and *Sh. Bharam Singh &*

*Anr. Vs. Venetain LDF Projects LLP*" (supra), it was held by the authority that it has no jurisdiction to deal with cases of assured returns. Though in those cases, the issue of assured returns was involved to be paid by the builder to an allottee but at that time, neither the full facts were brought before the authority nor it was argued on behalf of the allottees that on the basis of contractual obligations, the builder is obligated to pay that amount. However, there is no bar to take a different view from the earlier one if new facts and law have been brought before an adjudicating authority or the court. There is a doctrine of "prospective overruling" and which provides that the law declared by the court applies to the cases arising in future only and its applicability to the cases which have attained finality is saved because the repeal would otherwise work hardship to those who had trusted to its existence. A reference in this regard can be made to the case of *Sarwan Kumar & Anr Vs. Madan Lal Aggarwal Appeal* (civil) 1058 of 2003 decided on 06.02.2003 and wherein the hon'ble apex court observed as mentioned above. So, now the plea raised with regard to maintainability of the complaint in the face of earlier orders of the authority is not tenable. The authority can take a different view from the earlier one on the basis of new facts and law and the pronouncements made by the apex court of the land. It is now well settled preposition of law that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement for sale defines the builder-buyer relationship. So, it can be said that the



agreement for assured returns between the promoter and an allottee arises out of the same relationship and is marked by the original agreement for sale. Therefore, it can be said that the authority has complete jurisdiction with respect to assured return cases as the contractual relationship arises out of the agreement for sale only and between the same contracting parties to agreement for sale. In the case in hand, the issue of assured returns is on the basis of contractual obligations arising between the parties. Then in case of *Pioneer Urban Land and Infrastructure Limited & Anr. v/s Union of India & Ors.* (Writ Petition (Civil) No. 43 of 2019) decided on 09.08.2019, it was observed by the Hon'ble Apex Court of the land that "...allottees who had entered into 'assured return/committed returns' agreements with these developers, whereby, upon payment of a substantial portion of the total sale consideration upfront at the time of execution of agreement, the developer undertook to pay a certain amount to allottees on a monthly basis from the date of execution of agreement till the date of handing over of possession to the allottees". It was further held that 'amounts raised by developers under assured return schemes had the "commercial effect of a borrowing' which became clear from the developer's annual returns in which the amount raised was shown as "commitment charges" under the head "financial costs". As a result, such allottees were held to be "financial creditors" within the meaning of section 5(7) of the Code" including its treatment in books of accounts of the promoter and for the purposes of income tax. Then, in the latest pronouncement on this aspect in case *Jaypee Kensington Boulevard Apartments Welfare Association and Ors. vs. NBCC (India) Ltd. and Ors.* (24.03.2021-SC): MANU/ SC/0206 /2021, the same view was followed as taken earlier in the case of Pioneer Urban Land



Infrastructure Ltd & Anr. with regard to the allottees of assured returns to be financial creditors within the meaning of section 5(7) of the Code. Then after coming into force the Act of 2016 w.e.f 01.05.2017, the builder is obligated to register the project with the authority being an ongoing project as per proviso to section 3(1) of the Act of 2017 read with rule 2(o) of the Rules, 2017. The Act of 2016 has no provision for re-writing of contractual obligations between the parties as held by the Hon'ble Bombay High Court in case *Neelkamal Realtors Suburban Private Limited and Anr. v/s Union of India & Ors.*, (supra) as quoted earlier.

52. The money was taken by the builder as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.
53. The authority under this Act has been regulating the advances received under the project and its various other aspects. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. If the project in which the advance has been received by the developer from an allottee is an ongoing project as per section 3(1) of the Act of 2016 then, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings.

54. It is a matter of fact that the occupation certificate for the unit has not been received. The relevant clause 1 of the addendum to builder buyer agreement dated 18.01.2014 is reproduced hereunder for ready reference:

1. *That out of the total sale consideration amount of Rs. 88,00,000 to the Purchaser has paid to the Developer an amount of Rs. 79,20,000 calculated @ Rs. 2250/- per sq. ft. of the entire super area to be allotted, before the execution of the Flat Buyer Agreement. Against the receipt of this part sale consideration of Rs. 79,20,000 the Developer shall give an investment return @ Rs. 42.50 per sq. ft. per month i.e., Rs. 1,49,600/- to the Purchaser by way of interest (subject to deduction of tax at source) w.e.f. 01.04.2014 the return shall be paid on monthly intervals supported by 6 months PDC cheques which it is due till such time the office Space are leased out by the Developer on behalf of the Purchaser.*

55. Further an MOU dated 27.11.2017 was also executed between the complainant and the respondent no. 1. The Mou letter dated 27.11.2017 is reproduced hereunder for ready reference:

*This is in reference to the understanding of pending Returns upto November, 2017 which is Rs. 87,78,384/- due on 07<sup>th</sup> December. It has been decided that interest @ 12% will be payable on the pending Returns amounting to Rs. 87,783.84 subject to deduction of TDS & will be payable by 7<sup>th</sup> January 2018.*

*The Further returns of December 17 onwards will carry the interest in the same ratio and the amount will be Rs. 4876.88 which will be added on monthly basis in the amount of Rs. 87,783.834 and will be payable on 7<sup>th</sup> of every month till the total returns is paid as per terms of MOU is already signed.*

56. The authority is of the view that as per clause 1 of the addendum to builder buyer agreement dated 17.01.2014 the respondents/ developer are liable to pay Rs. 1,49,600/- to the purchaser by way of interest (subject to deduction of tax at source) w.e.f. 01.04.2014 the return shall be paid on

monthly intervals supported by 6 months PDC cheques which it is due till such time the office space are leased out by the developer on behalf of the purchaser.

57. The respondent no. 1 has paid an assured return till 31.05.2016. Thereafter pending returns from 01.06.2016 up to November 2017 of Rs. 87,78,384/- (Rs. 14,63,064/- per unit) will be given with an interest of 12% p.a. by 07<sup>th</sup> January 2018 subject to deduction of TDS. Further it was decided that from December 2017 onwards the monthly returns will carry the interest in same ratio and an amount of Rs. 4876.88 will be added on monthly basis in the amount of Rs. 87,783.834/-.

**Delay possession charges.**

58. In the present complaint, the complainant intends to continue with the project and is seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which reads as under.

***"Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*

*.....*  
*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

59. However, in the present matter no BBA has been 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 -:

*"Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered."*

60. Accordingly, the due date of possession is calculated as 3 years from the date of builder buyer agreement i.e., 17.01.2014. Therefore, the due date of possession comes out to be 17.01.2017.
61. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

**Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]**

- (1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

62. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest.
63. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 01.03.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
64. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

65. On consideration of documents available on record and submissions made by the complainant and the respondents, the authority is satisfied that the respondents are in contravention of the provisions of the Act. The agreement executed between the parties on 17.01.2014, the possession of the subject unit was to be delivered within stipulated time i.e., 17.01.2017. However now, the proposition before it is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges?



66. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of a provision in the addendum to the BBA and as per letter dated 27.11.2018. The assured return in this case is payable by the respondent no. 1 from 01.04.2014 till the date of leasing out of the office space. The respondents has already paid an assured return till 31.05.2016. Thereafter as per MOU dated 27.11.2018 the pending returns upto November, 2017 which is Rs. 87,78,384/- has to be paid with an interest of 12% p.a. subject to deduction of TDS. Further from December 2017 onwards the monthly returns will carry the interest in same ratio and an amount of Rs. 4876.88 will be added on monthly basis in the amount of Rs. 87,783.834/-.
67. If we compare the assured return with delayed possession charges payable under proviso to section 18(1) of the Act, 2016, the assured return is much better i.e., assured return in this case is payable a Rs. 1,49,600/- per month whereas the delayed possession charges are payable approximately Rs. 70,950/- per month. By way of assured return, the promoter has assured the allottee that he would be entitled for this specific amount till lease of the unit.
68. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under section 18 and assured return is payable even after due date of possession till the lease of the unit, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation. Hence, the authority directs the respondents/promoter to pay assured return from the date the payment of assured return has not been paid till lease of the said unit.



**VIII. Direct the respondents to pay a sum of Rs. 2 lakhs towards litigation cost.**

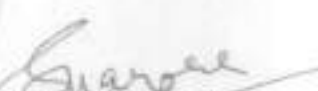
69. The complainant is seeking above mentioned relief w.r.t. compensation on account of mental harassment and cost of litigation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra), has held that an allottee is entitled to claim compensation and litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation as well as cost of litigation.

**H. Directions of the authority**

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

- i. Since assured return is higher than delay possession charges, the same is allowed. The respondents are directed to pay the arrears of amount of assured return.
- ii. The respondents are also directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of order after adjustment of outstanding dues, if any,

- failing which that amount would be payable with interest @ 8.85% p.a. till the date of actual realization.
- iii. The respondents shall not charge anything from the complainant which is not the part of the agreement of sale.
  - iv. The respondents are directed to handover possession of the unit in question and execute sale deed in favour of the complainant on payment of stamp duty and registration charges within 60 days after obtaining Occupation Certificate from the competent authority.
71. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
72. The complaints stand disposed of.
73. Files be consigned to registry.



(Sanjeev Kumar Arora)  
**Member**

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.03.2024

**HARERA**  
**GURUGRAM**