



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

**Complaint no.:** 5475 of 2023  
**Date of first hearing:** 14.03.2024  
**Date of decision** 30.05.2024

Mrs. Sukhpal Kaur  
**R/o:** - House No. 22, Sector-3, Chandigarh

**Complainant**

Versus

M/s KS Propmart Private Limited.  
**Regd. office at:** A-793, 1<sup>st</sup> floor, G.D. Colony, Mayur  
Vihar Phase III, Near Hanuman Mandir, New Delhi-  
110096  
**Corporate office at:** Plot No. 14, Ground Floor, Sector-  
44, Institutional Area, Gurugram- 122003 Haryana

**Respondent**

**CORAM:**  
Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**  
Shri Manul Mitra  
None

Complainant  
Respondent

**ORDER**

1. This complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

**A. Unit and project related details**



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

S. No.	Particulars	Details
1.	Name of the project	"Park Street", Sector 85, Gurugram
2.	Area of project	2.85 acres
3.	Nature of project	Commercial
4.	DTCP license no. and validity	100 of 2013 dated 02.12.2013 valid up to 01.12.2019
5.	Name of licensee	KS Propmart Pvt. Ltd.
6.	Unit and floor no.	G-95, Ground floor (As per page no. 9 of complaint)
7.	Area admeasuring	850 sq. ft. (Super area) (As per page no. 9 of complaint)
8.	Date of execution of memorandum of understanding	21.08.2018 (As per page no. 27 of the complaint)
9.	Total sale consideration	Rs.52,07,100/- (As per page no. 30 of the complaint)
10.	Amount paid by the complainant	Rs.51,85,466/- [As per page no. 31 of the complaint]
11.	Assured return clause	<b>3. Assured Return</b> <i>3.1 It is hereby agreed and undertaken by the developer that from 1<sup>st</sup> August, 2018 till the application for offer of possession is issued, the developer shall pay to the allottee an assured return at the rate of Rs.142.71/- per sq. ft. of super area of premises per month. The assured return shall be subject to tax deduction at source, which shall be payable on due date of every English Calender month on due basis.</i> (As per page no. 33 of the complaint)
12.	Date of execution of space buyer's agreement	Not executed
13.	Possession clause	N.A

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14.	Due date of possession (As per <i>Fortune Infrastructure and Ors. Vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i> )	01.08.2021 (Note:- Calculated from the 3 years from the date of funds transferred to the project Park Street i.e., 01.08.2018)
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

**B. Facts of the complaint:**

3. The complainant has made the following submissions: -

- I. That the complainant i.e., Mrs. Sukhpal Kaur is a permanent resident of House No.-22, Sector-3, Chandigarh and is a peace loving and law abiding citizen of India.
- II. That initially a commercial unit bearing no. GB-53 admeasuring a tentative super area of approximately 651.05 sq. ft. situated in "68 Avenue" in sector-68, Gurugram was allotted to the complainant.
- III. That thereafter, the respondent apprised the complainant about developing and setting up commercial towers/colony by the name of "Park Street" over an area of 2.85 acres situated at Village Badha, Sector-85, Gurugram.
- IV. That the complainant showed her interest in buying/purchasing a unit in the aforementioned commercial colony/towers being developed by the respondent.
- V. That the respondent had given false verbal assurances and promises to deliver the possession of the unit within 03 years as well as to give monthly assured return to the complainant.
- VI. That the complainant believing and falling for the false assurances of the respondent agreed to buy a unit in the aforementioned project.

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- VII. That thereafter on 01.08.2018, the complainant had requested to transfer the amount paid by her against unit no. GB-53 in 68 Avenue to unit no. G-95 in Park Street.
- VIII. That pursuant to the above mentioned surrender letter, the respondent and the complainant entered into a memorandum of understanding dated 21.08.2018 for allotment of unit no. G-95 on the ground floor admeasuring a tentative super area of 850 sq. ft. for a total agreed consideration of Rs.52,07,100/- in Park Street, Sector-85, Gurugram.
- IX. That according to clause 3.1 of the above mentioned MoU dated 21.08.2018, the respondent had to give monthly assured return of approximately Rs.1,21,303/- per month to the complainant w.e.f. 01.08.2018 till the application for offer of possession.
- X. That initially the respondent was paying the monthly assured return to the complainant till March 2020 but stopped paying assured return thereafter.
- XI. That the complainant had again and again requested the respondent to clear the pending assured return as she had no other source of income and had put her lifelong savings in buying the aforesaid unit with the intention of becoming the absolute owner of a world-class property (as promised by the respondent) in Gurugram.
- XII. That till date, neither the respondent has given possession to the complainant as the project is still incomplete, nor the respondent has paid a single installment towards monthly assured return from April 2020 till date.
- XIII. That from April 2020 till date i.e., October 2023, monthly assured return of 40 months is due which amounts to a total of Rs. 48,52,120/-.



- XIV. That the complainant had time and again requested the respondent to pay monthly assured return to the complainant in accordance with the said MoU and had put multiple efforts and approached the respondent for the same, but all the efforts made by the complainant went in vain as after receiving money from the complainant, the respondent started ignoring the complainant and has neither completed the project, nor applied for OC, nor executed a space buyer's agreement, nor the respondent has paid monthly assured return to the complainant for 40 months causing immense mental trauma and financial loss to the complainant.
- XV. That according to the application to authority for registration of real estate project submitted by the respondent to the Hon'ble Authority, revised date of completion of the said project is 31-12-2021 which makes it crystal clear to understand and deem that the project was supposed to be completed till 31.12.2021, although the complainant was shocked to know that the project is far from being completed.
- XVI. That taking advantage of its dominant position in the real estate market, the respondent has clearly refused to pay any pending and/or forthcoming monthly assured return as well as to give possession to the complainant leaving the complainant with no other option but to approach the Hon'ble Authority.
- XVII. That the complainant being an aggrieved party is filing the present complaint under Section 31 with the Authority for violation/contravention of provisions of this Act.

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

4. The complainant has sought following relief(s):
- Direct the respondent to pay the pending assured return of approximately Rs.1,21,303/- per month which is due for 40 months. (April 2020 till October 2023) i.e., Rs.48,52,120/-.



- ii. Direct the respondent to make legal and complete offer of possession as well as registry of the said unit to the complainant at the earliest after receiving necessary government licenses and approvals from the competent authority.
  - iii. Direct the respondent pay interest at the prescribed rate towards delayed possession compensation.
  - iv. Direct the respondent to pay an additional amount of Rs.1,00,000/- to the complainant towards litigation cost.
  - v. Direct the respondent to waive off any maintenance charges, cost of parking or any other charges that the respondent may have charged since the respondent has not offered possession till date.
5. The authority issued a notice dated 04.12.2023 of the complaint to the respondents by speed post and also on the given email address at [prempratik25@gmail.com](mailto:prempratik25@gmail.com), [INFOKSPROP MART@gmail.com](mailto:INFOKSPROP MART@gmail.com) and [mitramanul@gmail.com](mailto:mitramanul@gmail.com) for filing reply within 4 weeks. The delivery reports have been placed in the file. The counsel for the respondents neither put in appearance on 14.03.2024 and 30.05.2024 nor filed reply to the complaint within the stipulated period despite given ample opportunities. It shows that the respondent was intentionally delaying the proceedings by avoiding filing of written reply. The complainant is 85 years old senior citizen and has paid almost full consideration money and hence no further wait is justified. Therefore, in view of above, vide order dated 30.05.2024, the defence of the respondent was struck off.
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 complainant.

**D. Jurisdiction of the Authority:**

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7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**D.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.

**D.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 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.*

10. 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 complainant at a later stage.

**E. Findings on the relief sought by the complainant:**

- E.I Direct the respondent to pay the pending assured return of approximately Rs.1,21,303/- per month which is due for 40 months. (April 2020 till October 2023) i.e., Rs.48,52,120/-.**



11. The complainant is seeking unpaid assured returns on monthly basis as per the MOU dated 21.08.2018 at the rates mentioned therein. It is pleaded by the complainant that the respondent has not complied with the terms and conditions of the said MoU. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same. In **Gaurav Kaushik and anr. Vs. Vatika Ltd.** the authority has held that when the payment of assured returns is part and parcel of memorandum of understanding or buyer's agreement (maybe there is a clause in that document or by way of addendum or terms and conditions of the allotment of a unit), then the promoter is liable to pay that amount as agreed upon.
12. A memorandum of understanding was executed between the complainant and the respondent on 21.08.2018 by which a specific unit bearing no. G-95 has been allotted to the complainant for sale consideration of Rs.52,07,100/-. Although, there is no specific due date for handing over of possession is given in the MOU but as per clause 3.1 of the MOU, the respondent has promised an amount of Rs.142.71/- per sq. ft. of super area per month in the form of assured return till the offer of possession. The definition of "allottee" as per section 2(d) of the Act of 2016 provides that an allottee includes a person to whom a plot, apartment or building has been allotted, sold or otherwise transferred by the promoter. Section 2(d) of the Act of 2016 has been reproduced for ready reference:

**2(d)**

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

Keeping in view the above-mentioned facts and the definition of allottee as per Act of 2016, it can be said that the complainant is an allottee.



13. The money was taken by the promoter 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 promoter 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.
14. The promoter is liable to pay that amount as agreed upon. Moreover, an agreement/MoU defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the said memorandum of understanding.
15. In the present complaint, the assured return was payable as per clause 3 of MoU, which is reproduced below for the ready reference:

**3. Assured Return**

- 3.1 *It is hereby agreed and undertaken by the developer that from 1<sup>st</sup> August, 2018 till the application for offer of possession is issued, the developer shall pay to the allottee an assured return at the rate of Rs.142.71/- per sq. ft. of super area of premises per month. The assured return shall be subject to tax deduction at source, which shall be payable on due date of every English Calender month on due basis.*

Thus, the assured return was payable @ Rs.142.71 per sq. ft. of super area per month i.e., Rs.1,21,303/- per month w.e.f. 21.08.2018, till the possession of the said unit is handed over to the complainant.

16. In light of the reasons mentioned above, the authority is of the view that as per the MoU dated 21.08.2018, it was obligation on the part of the respondent to pay the assured return. It is necessary to mention here that the respondent has failed to fulfil its obligation as agreed inter se both the parties in MoU dated 21.08.2018. Accordingly, in the interest of natural justice, the liability of the respondent to pay assured return as per MoU is still continuing. The respondent has paid assured return to the complainant till March 2020. Therefore, considering the facts of the

present case, the respondent is directed to pay the amount of assured return in terms of clause 3 of MoU dated 21.08.2018 at the agreed rate i.e., @ Rs.1,21,303/-per month from the date the payment of assured return has not been paid i.e., April 2020 till the handing over of possession after obtaining the occupation certificate.

**E.II Direct the respondent to make legal and complete offer of possession as well as registry of the said unit to the complainant at the earliest after receiving necessary government licenses and approvals from the competent authority.**

**E.III Direct the respondent pay interest at the prescribed rate towards delayed possession compensation.**

17. The above sought relief(s) by the complainant are taken together being inter-connected.
18. **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.*

19. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.



20. 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., 30.05.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

21. 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;"*

22. The authority further observes that now, the proposition before the Authority whether an allottee who is getting/entitled for assured return even after expiry of the due date of possession, is entitled to both the assured return as well as delayed possession charges?

23. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottee on account of a provision in a MoU or in the BBA or an addendum to the MoU/BBA or allotment letter. The assured return in this case is payable from the date i.e., 21.08.2018 till possession is handed over to the complainant-allottee. If we compare the assured return i.e., Rs.1,21,303/- per month with delayed possession charges i.e., Rs.46,885/- approximately payable under proviso to section 18 (1) of the Act of 2016, the assured return is much higher. By way of assured returns, the promoter has assured the allottee that she will be

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entitled for this specific amount till handing over of possession. Accordingly, the interest of the allottee is protected even after the due date of possession is over as the assured return are payable till offer of possession. The purpose of delayed possession charges after due date of possession is over and payment of assured return after due date of possession is over are the same and safeguard the interest of the allottee as her money is continued to be used by the promoter even after the promised due date and in return, she is paid either the assured return or delayed possession charges, whichever is higher.

24. 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 handing over of possession of the said unit. The allottee shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation. In the present case, the assured return was payable till the possession of the unit is handed over to the complainant. The project is considered habitable or fit for occupation only after the grant of occupation certificate by the competent authority. However, the respondent has not received occupation certificate from the competent authority till the date of passing of this order. Hence, the said building cannot be presumed to be fit for occupation. In view of the above, the assured return shall be payable till the possession of the unit is handed over to the complainant after obtaining the occupation certificate from the concerned authorities.
25. Hence, the authority directs the respondent/promoter to pay assured return to the complainant at the rate of Rs.1,21,303/- per month from the date when the payment of the assured returns has not been paid i.e., 01.04.2020 till the possession is handed over to the complainant after obtaining the occupation certificate.

**E.IV Direct the respondent to pay an additional amount of Rs.1,00,000/- to the complainant towards litigation cost.**

26. The complainant is seeking above mentioned relief w.r.t. compensation. 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 & 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 & legal expenses.

**E.V Direct the respondent to waive off any maintenance charges, cost of parking or any other charges that the respondent may have charged since the respondent has not offered possession till date.**

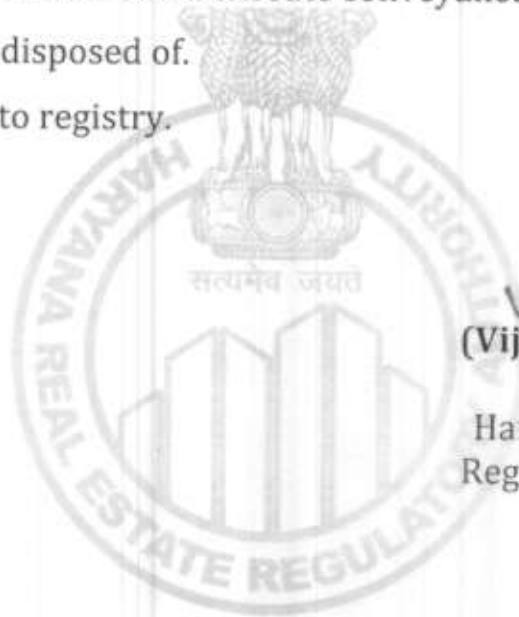
27. The Authority after carefully considering the submissions presented by the complainant, finds that the complainant has failed to substantiate her claims with any documentary evidence and it has not been pressed during the proceedings by the counsel for the complainant. In the absence of such material proof, the Authority is unable to ascertain the legitimacy of the complainant's concerns about the claimed reliefs. Thus, no direction to this effect.

**F. Directions of the authority:**

28. 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):
- The respondent is directed to pay the assured return at the rate i.e., Rs.1,21,303/- per month as per agreed terms of MoU from the date i.e., 01.04.2020 till the handing over of possession after obtaining the occupation certificate.

- ii. The respondent is directed to pay arrears of accrued assured return as per MoU dated 21.08.2018 till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @8.85% p.a. till the date of actual realization.
  - iii. The complainant is directed to pay outstanding dues, if any remains after adjustment of payable assured returns, the respondent shall handover the possession of the allotted unit on obtaining of occupation certificate and execute conveyance deed in next 90 days.
29. Complaint stands disposed of.
30. File be consigned to registry.

Dated: 30.05.2024



V.1 -   
**(Vijay Kumar Goyal)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram

**HARERA**  
**GURUGRAM**