

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

**Complaint no.** : 5846 of 2022  
**Date of complaint** : 23.08.2022  
**Date of order** : 28.08.2024

1. Nimrat Kaur,  
2. Biya Sidhu,  
3. Gurbaaz Singh,  
**All R/o:** - House No. 22, Sector-3, Chandigarh.

**Complainants**

Versus

M/s KS Propmart Private Limited.  
**Regd. office at:** A-22, Hill View Apartments,  
Vasant Vihar, New Delh-110057.  
**Corporate office at:** Plot No. 14, Ground Floor,  
Sector- 44, Institutional Area, Gurugram- 122003.

**Respondent**

**CORAM:**  
Ashok Sangwan

**Member**

**APPEARANCE:**  
Manul Mitra (Advocate)  
Jagdeep Yadav (Advocate)

Complainants  
Respondent

**ORDER**

1. This complaint has been filed by the complainant/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 under the provision of the Act or the Rules and regulations made thereunder or to the allottees 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Details
1.	Name and location of the project	"Park Street" at sector 85, Gurgaon, Haryana
2.	Project area	2.85 acres
3.	Nature of project	Commercial
4.	RERA registered/not registered	<b>Registered</b> <b>Vide no. 41</b> of 2019 dated 30.07.2017 <b>Valid/renewed up to-</b> 30.06.2023
5.	DTCP license no. & validity status	100 of 2013 dated 02.12.2013 <b>Valid/renewed up to-</b> 01.12.2019 <b>Licensee-</b> M/s K.S Propmart Pvt. Ltd.
6.	Date of MOU	30.08.2016 (page no. 31 of complaint)
7.	Unit Nos. and area	G-76 and G-97, Ground Floor, admeasuring 1254 sq. ft. and 294 sq. ft. (super built-up area) respectively. (page no. 48-50 of complaint)
8.	Assured Return clause	<b>3. Assured Return</b> <b>3.2</b> "It is hereby agreed and undertaken by the Developer from 1 <sup>st</sup> February 2017 till the notice for offer of possession is issued, the Developer shall pay to the Allottee an Assured Return at the rate of Rs.141.25/- per sq. ft. of super area of premises per month (herein referred to as the Assured return). The assured return shall be subject to tax deduction at source, which shall be payable on or before 7 <sup>th</sup> day of every English Calendar month on due basis."
9.	Total sale consideration	Rs.69,98,508/- (exclusive of EDC/IDC, applicable taxes) (page no. 33 of complaint)
10.	Amount paid by complainant	Rs.63,74,500/- (page no. 35 of complaint)

11.	Due date of possession	30.08.2019 (Calculated as per <i>Fortune Infrastructure and Ors. Vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i> )
12.	Occupation certificate	Not obtained
13.	Date of offer of possession to the complainant	Not offered

**B. Facts of the complaint:**

3. The complainants have made the following submissions: -

- I. That the respondent was developing and setting up commercial colony by the name of "Park Street" over an area of 2.85 acres situated at Village Badha, Sector-85, Gurugram, Haryana.
- II. That the complainants showed their interest in buying/purchasing two units in the aforementioned commercial colony and approached the respondent to understand the details of the said project and get the quotation of the same.
- III. That the respondent had given verbal false assurances and promises to deliver the possession of the unit within 03 years as well as giving monthly assured return to the complainants.
- IV. That on 30.08.2016, both the parties have entered into a MoU for the unit bearing nos. GC-01 & GE-14 on the ground floor admeasuring tentative super area of 1254 sq. ft. & 294 sq. ft. respectively in the project of the respondent named Park Street, Sector-85, Gurugram, Haryana for a total sale consideration of Rs.69,98,508/- against which the complainants had paid a sum of Rs.63,74,500/- to the respondent in all as evident from clause 1.4 of the said MoU.
- V. That according to clause 3.2 of the above-mentioned MoU, the respondent had to give monthly assured return of approximately

Rs.2,18,655/- to the complainants with effect from 01.02.2017 till the notice for offer of possession.

- VI. That initially the respondent was complying with its part of paying monthly assured return to the complainants from 01.02.2017 till March 2020, but stopped paying assured return any further.
- VII. That even after multiple repeated requests from the complainants from time to time to clear the monthly assured return, the respondent was adamant in ignoring their request and refused to pay any pending or further installment against monthly assured return.
- VIII. That almost six years have passed by and even after taking sale consideration of Rs.63,74,500/-, the respondent has failed to comply with its obligation to pay monthly assured return to the complainant, complete the project, apply for OC and has also failed to execute a space buyer's agreement with them till date.
- IX. 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 give possession to the complainants leaving them with no other option, but to approach this Authority for their grievance.
- X. That the complainants in exercise of their right under Section 18 of the Act, 2016 wishes to continue with the project and therefore shall be paid interest for every month of delay till the handing over of the possession, at the prescribed rate.

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

4. The complainants have sought following relief(s):
  - i. Direct the respondent to pay the pending and future assured return till notice of offer of possession as per clause 3.2 of MoU.
  - 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 to pay an additional amount of Rs.1,00,000/- to the complainants towards litigation cost.
  - iv. 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. On the date of hearing, the authority explained to the respondent/promoter 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.
6. The respondent/promoter put in appearance through Advocate and marked attendance on 23.11.2022, 26.04.2023, 03.01.2024 and 27.03.2024. Despite specific directions for filing of reply, the respondent has failed to comply with the orders of the authority. It shows that the respondent is intentionally delaying the procedure of the court by avoiding filing of the written reply. Therefore, vide proceeding dated 03.07.2024, it was observed that, "*Despite multiple opportunities neither the reply has been filed nor cost deposited. The matter is pending since 2022 (almost 2 years) and there is no further justification to give more time to file the reply. In view of the above, the defence of the respondent is struck of.*" However, in the interest of justice, the respondent was given an opportunity to file written arguments within a period of 2 weeks with an advance copy to the complainant. Accordingly, the respondent has filed its written arguments dated 22.07.2024, contesting the complaint on the following grounds: -
- i. That the complainant made an application for provisional allotment of a unit bearing no. GC-01 & GE-14 on the ground floor measuring a tentative super area of 1254 & 294 sq. ft. in the project developed by the respondent vide application form.
  - ii. That one of the offers made by the respondent at that point in time was that the respondent would pay an assured return at the rate of

- Rs.141.25/- sq. ft. of the super area from 01.02.2017 till the notice for the offer of possession issued for the retail block subject to force majeure conditions as provided under clause 6.1 and other clauses of the MOU dated 20.11.2016. It is submitted that an amount of Rs.76,80,801/- has been paid by the respondent as an assured return to the complainant.
- iii. That as per the MoU, the price of the units for an area admeasuring having a tentative super area of 1254 sq. ft. & 294 sq. ft respectively admeasuring an aggregate tentative super area of 1548 sq. ft. was Rs.69,98,508/- exclusive of EDC, IDC, IFMS, electricity connection charges, power backup charges, air conditioning charges, tax and other such levies/cesses/VAT as may be imposed by any statutory authority.
  - iv. That the complainant has made a payment of Rs.63,74,500/- including service taxes to the respondent at the time of the allotment. Further, as per the payment plan attached a Schedule- 1 to the MOU, the complainant was liable to make payment toward EDC, and IDC and other charges at the time of offer of possession.
  - v. That there was no time limit provided under the MoU for handing over the possession of the unit. Thus, time was not the essence of the contract for delivering the possession, however, it was mutually agreed upon that the complainant would be entitled to the benefit of the assured return as per the terms of the MoU. That the very inclusion of such a clause in the MOU goes a step further in illustrating the fact that the complainant very well knew and understood the implication of the terms of the MoU having no date of possession but having a buffer/protection of payment of assured return till offer of possession.
  - vi. That in the year 2019, an allotment letter dated 16.09.2019 was issued by the respondent company confirming the allotment of the complainant in the said project. That as typographical error the unit number of the complainant was inadvertently mentioned as G-97 & G-76 on the ground

- floor instead of GC-01 & GE-14. It is submitted that the same was a clerical error and the unit allotted to the complainant remains to be GC-01 & GE-14 for which the MOU dated 20.11.2016 was executed.
- vii. That the construction and development of the project was affected due to the force majeure conditions such as shortage of labour, stay on construction due to orders passed by NGT, lack of infrastructure facilities, implementation of social schemes like NREGA and JNNURM, shortage of sand and bricks, demonetization, implementation of GST, violations of the terms of the agreement by several allottees and lockdown due to the COVID-19 pandemic. Accordingly, the payment of the assured return was stopped due to force major conditions which continued or is still continuing.
- viii. That the possession of the unit in this agreement or any other documents with reference to the unit always mean that only symbolic/constructive possession is to be handed over to the complainant and no physical possession is supposed to be given since the unit booked by the complainant is for leasing purposes.
- ix. That the complainant is praying for the relief of "assured returns/lease rental" which is beyond the jurisdiction that this Authority.
- x. That the Banning of the Unregulated Deposit Scheme Act, 2019 (the "BUDS Act") was notified by the government of India on 31.07.2019 effective from 21.02.2019. As a consequence of the above, the assured return linked to sale consideration and the assured rental linked to the leasing arrangement as contemplated under the said MOU falls under the ambit of deposit and the same falls under the ambit of it and the respondent is under no obligation to pay the assured returns to the complainant. Further, the construction of the retail superstructure is complete, and the respondent shall soon be applying for the OC.

7. 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 parties.

**D. Jurisdiction of the Authority:**

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

**D.I Territorial Jurisdiction**

9. 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**

10. 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.*

11. 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.



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

**E.I Direct the respondent to pay the pending and future assured return till notice of offer of possession as per clause 3.2 of MoU.**

12. In the instant matter, a memorandum of understanding was executed between the parties on 30.08.2016 by which specific units bearing nos. GC-01 & GE-14 located on Ground Floor having tentative super area of 1254 sq. ft. & 294 sq. ft. has been allotted to the complainants for a total sale consideration of Rs.69,98,508/-. Although, there is no specific due date for handing over of possession is given in the MOU but as per clause 3.2 of the MOU, the respondent has promised an amount of Rs.141.25/- per sq. ft. of super area of premises per month in the form of assured return till the offer of possession.

13. At this stage, it is important to stress upon the definition of term allottee under the Act, 2016. 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 complainants are allottees.

14. The complainants are seeking unpaid assured returns on monthly basis as per the MOU dated 30.08.2016 at the rates mentioned therein. It is pleaded by the complainants 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.

15. The MoU dated 30.08.2016 can be considered as an agreement for sale interpreting the definition of the agreement for "agreement for sale" under section 2(c) of the Act and broadly by taking into consideration the objects of the Act. Therefore, the promoter and allottee would be bound by the obligations contained in the memorandum of understandings and the promoter shall be responsible for all obligations, responsibilities, and functions to the allottee as per the agreement for sale executed inter-se them under section 11(4)(a) of the Act. 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 "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.
16. It is pleaded on behalf of respondent/builder that after the Banning of Unregulated Deposit Schemes Act of 2019 came into force, there is bar for payment of assured returns to an allottee. But the plea advanced in this regard is devoid of merit. Section 2(4) of the above mentioned Act defines the word 'deposit' as *an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include:*
- (i) *an amount received in the course of, or for the purpose of business and bearing a genuine connection to such business including*
  - (ii) *advance received in connection with consideration of an immovable property, under an agreement or arrangement subject to the condition*

*that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement.*

A perusal of the above-mentioned definition of the term 'deposit', shows that it has been given the same meaning as assigned to it under the Companies Act, 2013 and the same provides under section 2(31) includes any receipt by way of deposit or loan or in any other form by a company but does not include such categories of, amount as may be prescribed in consultation with the Reserve Bank of India. Similarly rule 2(c) of the Companies (Acceptance of Deposits) Rules, 2014 defines the meaning of deposit which includes any receipt of money by way of deposit or loan or in any other form by a company but does not include:

- (i) *as an advance, accounted for in any manner whatsoever, received in connection with consideration for on immovable property*
- (ii) *as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;*

17. So, keeping in view the above-mentioned provisions of the Act of 2019 and the Companies Act 2013, it is to be seen as to whether an allottee is entitled to assured returns in a case where he has deposited substantial amount of sale consideration against the allotment of a unit with the builder at the time of booking or immediately thereafter and as agreed upon between them.
18. The Government of India enacted the Banning of Unregulated Deposit Schemes Act, 2019 to provide for a comprehensive mechanism to ban the unregulated deposit schemes, other than deposits taken in the ordinary course of business and to protect the interest of depositors and for matters connected therewith or incidental thereto as defined in section 2 (4) of the BUDS Act 2019.
19. 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.

20. 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 complainants to the builder is a regulated deposit accepted by the latter 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. 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.
21. 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**

3.2 "It is hereby agreed and undertaken by the Developer from 1<sup>st</sup> February 2017 till the notice for offer of possession is issued, the Developer shall pay to the Allottee an Assured Return at the rate of Rs.141.25/- per sq. ft. of super area of premises per month (herein referred to as the Assured return). The assured return shall be subject to tax deduction at source, which shall be payable on or before 7<sup>th</sup> day of every English Calendar month on due basis."

Thus, the assured return was payable @Rs.141.25/- per sq. ft. of super area of the premises per month w.e.f. 01.02.2017, till the notice for offer of possession is issued to the complainants.

22. In light of the reasons mentioned above, the authority is of the view that as per the MoU dated 30.08.2016, 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 30.08.2016. Accordingly, the liability of the respondent

to pay assured return as per MoU is still continuing. Hence, the respondent/promoter is directed to pay assured return to the complainants at the agreed rate i.e., @Rs.141.25/- per sq. ft. of super area of the premises from the date i.e., 01.02.2017 till offer of possession is issued to the complainants after obtaining the OC/CC from the competent authority as per the memorandum of understanding after deducting the amount already paid on account of assured returns to the complainants.

**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.**

23. As per Section 11(4)(b) of the Act of 2016, the respondent/promoter is obligated to obtain the completion certificate or the occupation certificate, or both, as applicable, from the competent authority as per law and to make it available to the allottees individually or to the association of allottees as the case may be. Further as per Section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainants. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. However, there is nothing on the record to show that the respondent has applied for occupation certificate or what is the status of the development of the above-mentioned project. In view of the above, the respondent is directed to offer possession of subject units to the complainants within 60 days after obtaining OC/CC from the competent authority. The respondent is further directed to get the conveyance deed executed in favour of the complainants in terms of section 17(1) of the Act of 2016 read with clause 3.3 of the MoU dated 30.08.2016, on payment of stamp duty and registration charges as applicable, within three months after obtaining occupation certificate from the competent authority.

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

24. The complainants are 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. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation and litigation expenses.

**E.IV 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.**

25. The Authority after carefully considering the documents available on record as well as submissions made by the complainants in the present complaint determined that there is not even a single document available on record to substantiate the claim of the complainants and the same has not been pressed by the counsel for the complainants during the proceedings. Therefore, in absence of such material proof, the said relief cannot be granted to the complainants. Thus, no direction to this effect.

**F. Directions of the authority:**

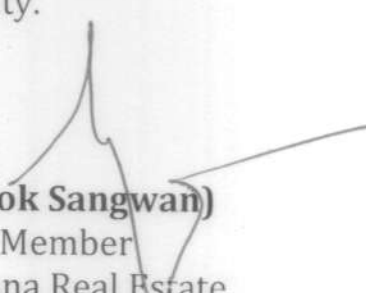
26. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to pay assured return to the complainants at the agreed rate i.e., @Rs.141.25/- per sq. ft. of super area of the

premises from the date i.e., 01.02.2017 till offer of possession is issued to the complainants after obtaining the OC/CC from the competent authority as per the memorandum of understanding after deducting the amount already paid on account of assured returns to the complainants.

- ii. The respondent is directed to pay arrears of accrued assured return as per MoU dated 30.08.2016 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 @9% p.a. till the date of actual realization.
  - iii. The respondent is directed to offer possession of the subject units to the complainants within 60 days from the date of obtaining OC/CC from the competent authority.
  - iv. The respondent shall not charge anything from the complainants which is not the part of the MoU dated 30.08.2016.
  - v. The complainants are directed to pay outstanding dues, if any, after adjustment of payable assured returns.
  - vi. The respondent shall get the conveyance deed executed in favour of the complainants in terms of section 17(1) of the Act of 2016 read with clause 3.3 of the MoU dated 30.08.2016, on payment of stamp duty and registration charges as applicable, within three months after obtaining occupation certificate from the competent authority.
27. Complaint stands disposed of.
28. File be consigned to registry.

Dated: 28.08.2024

  
**(Ashok Sangwan)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram