

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

Complaint no. : 7147 of 2022  
Date of complaint : 11.11.2022  
Date of order : 14.11.2024

Vijay Kumar HUF  
R/o: Flat no. H-5, Bandu Vihar Apartment  
Plot no. 11, Sector-10, Dwarka, Delhi-110075.

**Complainant**

Versus

M/s Parsvnath Developers Ltd.  
Regd. Office At: Parsvnath Metro Tower,  
Near Shahdara Metro Station, Shahdara,  
Delhi-110032.

**Respondent**

**CORAM:**  
Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**  
Shri Dharmender Sehrawat (Advocate)  
Shri Nitin Harsh Gupta (Advocate)

Complainant  
Respondent

**ORDER**

1. The present 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 provisions of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

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**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 and location of the project	"I.T. Park", Sector 48, Gurugram
2.	Licensed area	6.45 Acres
3.	Nature of the project	Commercial/IT space
4.	DTPC license no.	47 of 2008 dated 11.03.2008 Valid upto 10.03.2020
5.	Name of licensee	Dharmander-Karambir & 3 Ors.
6.	RERA registered	Un-registered
7.	Unit no. and floor no.	No unit/space no. was allotted
8.	Unit area admeasuring	1000 sq. ft. (Super area) (As per page no. 20 of the complaint)
9.	Allotment letter	No specific allotment letter has been issued [Note: 03.04.2010 was inadvertently recorded during proceedings of the day dated 14.11.2024]
10.	Date of Memorandum of Understanding	31.12.2009 (As per page no. 14 of the complaint)
11.	Assured Return Clause	<i>"2. That out of the said total consideration amount the second party shall pay to the first party a sum calculated @Rs.2025/- per sq. ft. of the entire super area to be allotted, on or before the signing this memorandum of understanding. That first party shall after receipt of party consideration @Rs.2025/- per sq. ft. of the entire super area i.e., Rs.20,25,000/- given an investment return @ Rs.42.75 per sq. ft. per month i.e., Rs.42,750/- by way of interest (subject to deduction of tax at</i>

		source) w.e.f 01.02.2010 on quarterly intervals at the end of every quarter for which it is due." (As per page no. 15 of the complaint)
12.	Possession clause	Not available
13.	Due date of possession	<b>31.12.2012</b> <i>"Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018-SC); MANU/SC/0253/2018</i> Hon'ble Apex Court observed that "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 <b>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.</b> " In view of the above-mentioned reasoning, the date of the MoU dated 31.12.2009 ought to be taken as the date for calculating the due date of possession. Therefore, the due date for handing over the possession of the unit comes out to be 31.12.2012.
14.	Total sale consideration	Rs.22,50,000/- (As per page no. 20 of the complaint)
15.	Amount paid by the complainant	Rs.20,25,000/- (As per page no. 20 of the complaint)
16.	Assured return paid to the complainant (Till April, 2015)	Rs.26,93,250/- (As stated by the counsel for the respondent during the proceedings dated 04.01.2024)
17.	Occupation certificate	Not received
18.	Offer of possession	Not offered



**B. Facts of the complaint**

3. The complainant has made the following submissions: -
- a. That the respondent is a real estate developer and have been developing various residential as well as commercial projects in and around NCR region. The officials of the respondent approached the complainant in the month of October, 2012 and represented that a project named "I.T. Park" is being developed by respondent for which requisite license had been obtained under the license no.47 of 2008 from DTCP, Haryana situated at Sector-48, Village- Tikri Gurgaon-Pataudi, Gurgaon.
  - b. The respondent planned to develop an office and commercial complex on the said land by constructing thereon multi-storied buildings. The project is comprising of premium offices cum retail shops with the basic amenities like car parking space and other utilities.
  - c. The representatives of respondent informed and assured the complainant that the construction on the project will commence within a period of 2 months i.e. maximum by the end of December, 2009 and possession will be handed over within the period of 36 months. Further the representatives of respondent had represented that the respondent will pay the assured return amount of Rs.42,750/- after deducting the TDS to complainant till the date of handing over the possession on making the complete payment of Rs.20,25,000/-. Thus, believing upon the representations and assurances of the respondent, the complainant made the payment of Rs.20,25,000/- at once. The fact has also been confirmed and acknowledged by the respondent in the memorandum of understanding dated 31.12.2009.

- d. That after the execution of the MOU dated 31.12.2009, the complainant asked the officials of the respondent to execute other documents such as the allotment letter, builder buyer agreement. However, the officials of the respondent kept delaying the execution of the same on one pretext or another. Since, the complainant had already paid the entire sale consideration amount to the respondent, the complainant had no choice but to keep agreeing and waiting for the respondent to execute the other requisite documents and the faith of the complainant on the respondent was fading.
- e. That the respondent started paying the assured returns from 01.10.2010 to the complainant in accordance with the MoU and the faith of the complainant started to get restored in the respondent. However, the faith of the complainant in the respondent did not last for long as the respondent started to default in paying the assured returns and even failed to execute the requisite documents.
- f. That the respondent time to time contacted the officials of the respondent to know the status of the construction of the project but the representative of the respondent always gave ambiguous answers and assured that the possession will be given on time without any delay and default, further if there is any default then respondent will compensate as per the MoU. The officials of the respondent also kept reassuring the complainant that the assured returns would be paid till the possession is handed over.
- g. That to the shock of the complainant, the respondent stopped paying the assured returns after 01.04.2015 and till date no amount whatsoever has been paid to the complainant by the respondent as per the MOU.

- h. That thereafter the complainant constantly kept taking the update from the officials of the respondent however, the complainant was only told to keep patient and no update was ever provided by the Respondent and nor were the assured return ever provided. It is pertinent to note that the complainant had no choice but to wait in the hopes of getting the possession soon as the respondent had already paid the sale consideration amount in full.
- i. That the complainant bona fide for his needs and better future had purchased the unit in question. It is highly pertinent to note that the MoU was signed in December, 2009 and it has been almost 13 years and the possession has not yet been handed over when it was promised by the respondent that the possession would be handed over within 36 months.
- j. That thereafter the complainant received a letter on 03.02.2021 asking the complainant to state any objection regarding the proposed change in the beneficial interest/joint development rights from Parsvnath Developers Limited to Titan Infracon LLP. The complainant was shocked to receive a letter like that after a delay of 12 years, the rights were being transferred to another developer. Thereafter, the complainant also wrote a letter dated 01.03.2021 to the Senior Town Planner stating the objection regarding the transfer of rights.
- k. That as huge time has been lapsed, the complainant therefore made several calls to the customer care and marketing departments to seek status of the construction and handing over of the possession of the unit, but the complainant was never provided with a satisfactory response and the respondent's officials made false and frivolous statements and gave false assurances that the construction is in full

swing and the unit shall be handed over within the agreed time. Thereafter, the complainant had visited the site in the month of September, 2022 and was shocked to realize that the project was getting delayed as very slow construction was being carried out. That complainant noticed that external work in the building, the land scape work and other such developments and facilities are not completed till date. That interestingly till date project is far from completion.

- l. That almost a period of 13 years has been lapsed from the date of booking of the unit. Despite passing of huge time the respondent has deliberately failed to handover the possession of the unit to the complainant and further failed to make timely payments of the assured return as per MoU.
- m. As per Clause 19(4) of the Real Estate (Regulation and Development) Act, (RERA), 2016, the allottee is entitled to claim for compensation with interest in the event that the project is delayed.
- n. That respondent has not bothered to act accordingly and did not comply with the terms and conditions of the MOU and did not handover the possession of the unit till date.
- o. That the complainant avers that in view of the principle of the parity the respondent is also liable to pay interest as per RERA Act in case of any default on his part. They are also liable to pay pendent lite interest and further interest till date of actual payment.

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

4. The complainant has sought following relief(s):
  - i. Direct the respondent to handover the physical possession of the unit purchased by the complainant.



- ii. Direct the respondent to pay the assured return payment @42,750/- per month till date of handover the possession of unit.
  - iii. Direct the respondent to pay delay payment charges at the interest rate prescribed by RERA.
  - iv. Direct the respondent to pay litigation cost of Rs.1,00,000/-.
5. The respondent/promoter put in appearance through its counsel and marked attendance on 18.05.2023, 12.10.2023, 04.01.2024, 25.04.2024 and 22.08.2024. Despite giving specific directions to file reply, it has failed to comply with the orders of the authority. It shows that the respondent is intentionally avoiding filing of the written reply. Therefore, vide proceeding dated 12.10.2023, the defence of the respondent was ordered to be struck off for not filing reply.
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. Written submissions made by the complainant:**

7. The complainant has filed written submissions on 25.10.2024 and same are taken record. No additional facts apart from the complaint has been stated in the written submissions.

**E. Jurisdiction of the authority**

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

**E.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.

**E.II Subject matter jurisdiction**

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.*

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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

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

**F.I Direct the respondent to handover the physical possession of the said unit.**

12. On consideration of documents available on record, the Authority observes that the unit/space allotted to the complainant-allottee was only for leasing purpose and there is no clause in MoU wherein it was agreed that the respondent will offer physical possession of the unit/space to the complainant-allottee. Moreover, during proceedings

of the day dated 14.11.2024, the counsel for the complainant also clarifies that the unit/space is for leasing and no physical possession is to be handed over in terms of MoU dated 31.12.2009. Thus, in view of above, no specific directions to the said relief.

**F.II Direct the respondent to pay the assured return @Rs.42,750/- per month till the date of handover of the possession of the unit.**

**F.III Direct the respondent to pay delay payment charges at the interest as prescribed in the Act.**

13. On the above-mentioned reliefs sought by the complainant, are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
14. The complainant in the present complaint seeking unpaid assured returns from the respondent as per clause 2 of the MoU dated 31.12.2009, as the respondent agreed to give an investment return @Rs.42.75/- per sq. ft. per month i.e., Rs.42,750/- to the complainant-allottee on the amount received till offer of possession of the space. However, it failed to pay return on investment for the space w.e.f. April 2015 and the said default is continuing till date. The total sale consideration of the allotted space was Rs.22,50,000/- and the complainant has paid a sum of Rs.20,25,000/- i.e.,90% of the total sale price.
15. An MOU 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. Therefore, different kinds of payment plans were in vogue and legal within the meaning of the agreement for sale. One of the integral parts 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 return 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 allottees.

16. The money was taken by the builder as a deposit in advance against allotment of immovable property. 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.

17. 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 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.
18. **Due date of handing over possession:** As per the documents available on record, no BBA has been executed between the parties and 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."*

19. Accordingly, the due date of possession is calculated as 3 years from the date of signing of MoU. Therefore, the due date of handing over of the possession for the space/unit comes out to be 31.12.2012.
20. On consideration of documents available on record and submissions made by the complainant, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. The MoU executed between the 31.12.2009,
21. It is worthwhile to consider that the assured return is payable to the allottee on account of provisions in memorandum of understanding dated 31.12.2009. The assured return in this case is payable as per clause 2 of MoU dated 31.12.2009. *That out of the said total consideration amount the second party shall pay to the first party a sum calculated @Rs.2025/- per sq. ft. of the entire super area to be allotted, on or before the signing this memorandum of understanding. "That first party shall after receipt of party consideration @Rs.2025/- per sq. ft. of the entire super area i.e., Rs.20,25,000/- given an investment return @ Rs.42.75 per sq. ft. per month i.e., Rs.42,750/- by way of interest (subject to deduction of tax at source) w.e.f 01.02.2010 on quarterly intervals at the end of every quarter for which it is due.* Further assures the complainant-allottee as per clause 3 of MoU *"That the first party shall two months prior to date of offer of possession of space demand from the second party the remaining consideration amount of @Rs.225/- per sq. ft. of super area of the proposed premises i.e., Rs.2,25,000/- subject to increase/decrease on the basis of actual super area of the space at the time of completion/offer of possession of the space. Henceforth, on receipt of total sale consideration of Rs.22,50,000/- subject to increase or decrease as aforesaid the first*

*party shall pay to the second party an investment return of @Rs.45/- per sq. ft. per month of the space are till such time the space is leased out (but subject to clause 6) on behalf of second party by the first party at the exclusive cost of the first party.*

22. Therefore, the authority directs the respondent/promoter to pay assured return from the date the payment of assured return was stopped till offer of possession of the allotted unit/spaces.
23. The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding sue, if any.

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

24. The complainant is seeking above mentioned relief w.r.t. 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 & 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 litigation expenses.

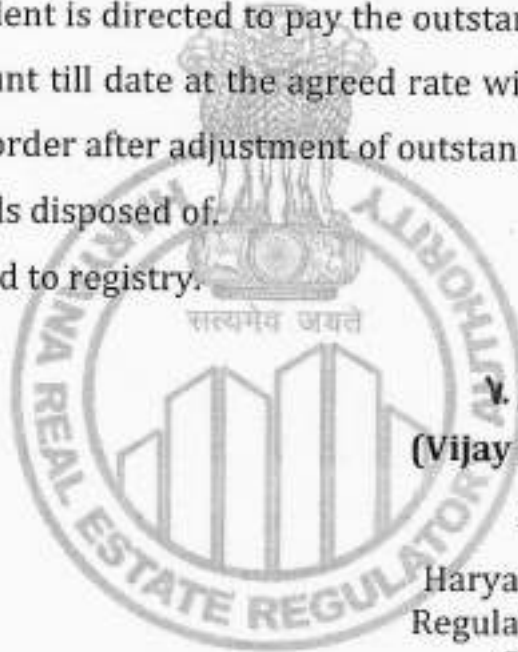
**G. Directions of the authority**

25. 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/promoter is directed to pay the amount of assured return at the agreed rate i.e., @42.50/- per sq. ft. per month to the complainant/allottee from the date of payment for assured return was stopped till offer of possession in terms of memorandum of understanding executed between the parties.
  - ii. The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any.
26. Complaint stands disposed of.
27. File be consigned to registry.

Dated: 14.11.2024



  
(Vijay Kumar Goyal)

Member

Haryana Real Estate  
Regulatory Authority,  
Gurugram.

**HARERA**  
**GURUGRAM**