

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

Complaint no.	4790 of 2021
Date of filing complaint	13.12.2021
Date of decision	14.01.2025

Shakuntla Khatri

Resident of: Flat no. 6, Anand Apartment, Ward no. 1,
Mehrauli, South Delhi-110030

Complainant

Versus

M/s Imperia Structures Limited

Regd. office: A-25, Mohan Co-operative Industrial
Estate, New Delhi-110044.

Respondent

CORAM:

Shri Arun Kumar

Chairman

Shri Vijay Kumar Goyal

Member

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Sunil Kumar (Advocate)

Complainant

Sh. Geetansh Nagpal (Advocate)

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 there under or to the allottee as per the agreement for sale executed inter se.

A. Project and unit related details

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

S. N.	Particulars	Details
1.	Name and location of the project	"Mindspace" at sector 62, Golf Course Road, Gurgaon, Haryana
2.	Nature of the project	IT Park Colony
3.	Project area	8.35625 acres
4.	DTCP license no.	86 of 2010 dated 23.10.2010 valid upto 22.10.2020
5.	Name of licensee	Baakir Real Estate Pvt. Ltd. and others
6.	RERA Registered/ not registered	240 of 2017 dated 25.09.2017 valid upto 31.12.2020
7.	Unit no.	020, 6 th floor as admitted by the respondent (page no.2 under clause C-para-2)
7.	Unit type	Virtual space
8.	Unit area admeasuring	IT office space measuring 500 sq. ft. (page no. 16 of complaint)
9.	Date of MoU	06.12.2011 (page no. 17 of complaint)
11.	Possession clause & Clause of assured return	<i>4. That the Developer will pay Rs. 60/- (Rupees Sixty Only) per sq. ft. per month on 500 lat as an assured return to the Allottee(s) from 01-12-2011 till offer for possession of the Space Thereafter the Developer shall pay Rs. 50/- (Rupees Fifty Only) per sq. ft. per month on 500 sq. 12. as assured rental till the offered Space is leased out to intended Lessee. The Developer has represented to the Allottee(s) that the possession of the Said Unit shall be handed over by the Developer to the</i>

		<p><i>Allottee(s) but in the event of virtual space the space will be registered in favour of Allottee(s) and handed over to the Lessee within a maximum period of 2 (two) years after approval of Building plans of the Said Project from competent authorities of the Said Project subject to force majeure. That the Allottee (s) hereby agrees accepts and confirms the authority and power of the Developer for any variation or change in the location or area of the Said Unit allotted to him and that the allotment is provisional.</i></p>
12.	Date of revised building plan approval	04.12.2015 (as submitted by the respondent, page 2 of respondent)
12.	Due date of possession	04.12.2017 (calculated from the date of revised building plan approval as originally approved plan is not on record)
13.	Total sale consideration	Rs. 32,75,000/- (as per statement of account dated 12.09.2022)
14.	Amount paid by the complainant	Rs. 34,07,686/- (as per statement of account dated 12.09.2022)
15.	Offer of possession for fit out	15.07.2019 (page no. 10 of reply)
16.	Occupation certificate	02.06.2020 (page no. 14 of reply)

B. Facts of the complaint

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

- a. That on 02.11.2011, complainant booked a unit having super area of 500 sq. ft. at basic rate of Rs.5,760/- per sq. ft. situated in the project earlier called as "The Byron" which was later on named as "MindSpace" located at Sector 62, Gurugram by paying a booking amount of Rs.2,95,416/-.
- b. That on 26.11.2011, the complainant further made payment to the tune of Rs.26,58,770/- to the respondent towards booking of the aforesaid



- unit. Thereafter, as total payment of the space was made by the complainant i.e., Rs.29,54,186/-, and a memorandum of understanding dated 06.12.2011 was executed between the parties. The possession of the unit was agreed to be delivered within 2 years after approval of building plans of the said project from concerned authorities and it was further agreed by the respondent to make payment of assured return till offered space is leased out to intended lessee i.e., till handover the possession to the complainant and further leased for initially 3 years.
- c. That the respondent failed to handover the possession till date. Assured return is paid by the respondent till December 2019 and thereafter no payment was received by the complainant towards assured return as duly agreed and promised by the respondent. The payment of assured return is due from January 2020 onwards.
 - d. That the complainant paid more than 100% of the basic sale price i.e., Rs.28,80,000/- by paying Rs.29,54,186/- to the respondent by November 2011 as evident from the statement of accounts.
 - e. That only till December 2019, the complainant received the amount towards assured return and thereafter, the two post-dated cheques were dishonoured and subsequently no payment has been made by the respondent towards assured return. Even after continuous follow -ups, respondent failed to comply with its contractual obligations as agreed in MoU.
 - f. That the respondent was liable to offer the possession of a said space to the lessee within 2 years of approval of building plans as per clause 4 of the agreement. However, till date the respondent has not even offered the possession of the said space to the intended lessee. As per

clause 9 of the MoU, the respondent was liable to put the said unit on lease for a minimum rent of Rs.50/- per sq.ft. of super built up area which would initially be 3 years.

- g. That the builder in last 10 years, many time made false promises for possession and lease of space and current status of project still not completed by builder has breach the trust and agreement. As per section 19(6) of the Act, 2016, complainant has fulfilled her responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement. Therefore the complainant is not in breach of any of the terms of the agreement.
- h. That the respondent has indulged in all kinds of tricks and blatant illegality in booking and drafting of MoU with a malicious and fraudulent intention and cause deliberate and intentional huge mental and physical harassment of the complainant and her family and the complainant is eminently justified in seeking possession of space along with delayed penalty as well as due payment towards assured return.
- i. That keeping in view the snail paced work at the construction site and half-hearted promises of the respondent and trick of extract more and more money from complainant pocket seems bleak and the same is evident of the irresponsible and desultory attitude and conduct of the respondent, consequently injuring the interest of the buyers including the complainant who has spent her entire hard earned savings in order to buy this space and stands at a crossroad to nowhere. The inconsistent and lethargic manner, in which the respondent conducted its business and their lack of commitment in completing the project on time, has cause the complainant great financial and emotional loss.

- j. That the cause of action to file the instant complaint has occurred within the jurisdiction of the Authority as the space which is the subject matter of the complaint is situated in Sector 62 of Gurugram which is within the jurisdiction of the Authority.

C. Relief sought by the complainants:

6. The complainant has sought following relief(s)
 - a. Direct the respondent to give possession of the unit as well as assured return.
 - b. Direct the respondent to pay delay possession charges.

D. Reply by the respondent

7. The respondent contested the complaint on the following grounds:
 - a. At the outset, the respondent denies each and every statement, submissions and contentions set forth in the complaint to the extent the same are contrary to and inconsistent with the true and complete facts of the case and the submissions made on behalf of the respondent in the present reply. The averments and contentions, as stated in the complaint under reply, may not be taken to be deemed to have been admitted by the respondent, save and except what are expressly and specifically admitted and the rest may be read as travesty of facts.
 - b. That the complainant is seeking for the relief in the manner of granting possession, delay possession charges i.e., compensation of delay possession charges and assured returns thus the concurrent relief prayed by the complainant before the hon'ble commission i.e., assured return which is the scheme of delay in possession same is paid to complainant by the respondent. Giving assured return on the amount deposited is identical in nature to compensation for giving delay

possession charges thus allowing the present complaint shall result in justification and illegal against the respondent.

- c. That, on 03.11.2011, the complainant has booked an office space with the respondent at project launch, then named as "Mindspace", located at Sector-62, Golf Course Road, Gurgaon, Haryana.
- d. That the State Government had acquired the huge land which comprises the said project land from farmers and transferred such land to the respondent for development in accordance with its master plan and then it had carved out various sectors and plots therein. The respondent started construction over the said project land after obtaining all necessary sanctions/ approvals/clearances from different state/central agencies/ authorities. The respondent received initial approval of building plans on 04.12.2015, and started the milestone construction of the present project.
- e. That the respondent vide letter dated 15.07.2019 issued the "offer of possession for fit-out period and commencement of lease rent" for the unit no. A 6th floor 020 admeasuring 500 sq.ft. which is a virtual office space located in the project named "MINDSPACE" at Sector-62, Gurugram, Haryana.
- f. That the respondent puts all its money received from the allottees upon the construction and default in making the payment affects the construction speed and the whole cycle of completion of the committed project, therefore, the default in making the payment affects the whole cycle of construction and eventually affects the delivery of the project to other allottees to whom the promoter has committed the timely delivery. It is also necessary to bring in notice that, inspite of several



difficulties and certain force majeure such as recent COVID-19, the respondent has procured the Occupancy Certificate on 02.06.2020, which shows the bonafide of the respondent to complete the project inspite of the many hardships faced in completing the project.

- g. That the complainant has not approached the Authority with clean hands and bonafide intentions and that depicts in her action as she has not paid the installments on time and still a large portion of amount is still due despite the fact that so many reminders has been sent to her asking for the clearance of the payments due but in vein. Respondent after giving every reasonable opportunity to the complainant through numerous phone calls, reminders letters and a final notice and taking into consideration the daily losses being suffered by it.
- h. That the above-mentioned clause it is unequivocally agreed between the parties that the respondent would pay the assured returns to the complainant till the "Offer of Possession" i.e., sent to the complainant vide letter dated 15.07.2019 and afterwards would pay the assured rental till the "agreement of lease" is executed between the parties. In both circumstances the complainant is in win-win situation. If the respondent completes the construction and offer the possession to the complainant, still the complainant would be getting the assured rental, or in case the respondent fails to offer the possession, the monthly installments of assured return is payable to the complainant. The respondent has paid the assured returns to the complainants from the period starting from 2011 to till 2019 @ Rs.22,500(Gross)/- Approx per month towards the booking units, consequently, the complainant has almost received the amount invested in the said unit.

- i. That, due to the force majeure conditions and circumstances, which were beyond the control of the respondent as mentioned herein below, the construction works got delayed at the said project. Both the parties i.e., the complainant as well as the respondent had contemplated at the very initial stage while signing the "MOU" that some delay might occur in future and that is why under the force majeure clause as mentioned in the "MOU", it is duly agreed by the complainant that the respondent would not be liable to perform any or all of its obligations during the subsistence of any force majeure circumstances and the time period required for performance of its obligations shall inevitably stand extended. It is unequivocally agreed between the complainant and the respondent that the respondent is entitled to extension of time for delivery of the said unit on account of force majeure circumstances beyond the control of the respondent.
- j. That, owing to unprecedented air pollution levels in Delhi NCR, the Hon'ble Supreme Court ordered a ban on construction activities in the region from 04.11.2019, onwards, which was a blow to realty developers in the city. The air quality index at the time was running above 900, which is considered severely unsafe for the city dwellers. Following the Central Pollution Control Board declaring the AQI levels as not severe, the SC lifted the ban conditionally on 09.12.2019 allowing construction activities to be carried out between 6 am and 6 pm, and the complete ban was lifted by the Hon'ble Supreme Court on 14.02.2020.
- k. That every year the construction work was stopped/banned/stayed due to serious air pollution during winter session by the Hon'ble



National Green Tribunal, and after banned/stayed the material, manpower and flow of the work has been disturbed/distressed. Owing to the above said force majeure circumstances and reasons beyond the control of the respondent, it was extremely necessary to extend the intended date of offer of possession mentioned in the "MOU." Hence, the intended date for offer of possession of the said flat was rescheduled.

- l. That, the respondent was adhering to the "MOU" entered into between the parties, and willing to adjust for further period in the final demand but subject to the payment by the complainant, the said unit booked by the complainant is a virtual unit and the actual physical possession could not be done and the same is also not part of the 'MOU." The respondent has received completion certificate on 02.06.2020 and willing to execute "agreement of lease deed" subject to the compliance of "MOU".
- m. That on account of wilful breach of terms of buyer's agreement by failing to clear the outstanding dues despite repeated requests, the complainant has till date made a payment of Rs. 31,24,186/- against the total sale consideration as raised by the respondent in accordance with the flexi payment plan and the terms of the buyers agreement.
- n. That the complainant is liable to pay the maintenance cost and services charges other incidental charges for the period of lease to the developer or to any other maintenance agency appointed by the developer.
- o. That the respondent had already obtained the part Occupation Certificate for the very project, Mind space an office space with the

respondent at project launch, the named as "Mind space". Respondent has also intimate the complainant that the OC has obtained on your booked office space in project "Mind space" and to take the possession of the office space but the complainant neither contact to respondent nor taken the possession of the office space.

- p. That the complainant is a mere investor and seeking high returns on her investment approached the respondent sometimes in year 2011 and showed her desire to book an office space in one of the project being developed by the respondent namely Mindspace located at Sector-62, Golf Course Road, Gurgaon, Haryana.
- q. That the complainant after satisfying herself about the location, approvals and possession timelines, high returns on investment vide her application form expresses her intent to own the commercial space on assured returns scheme.
- r. That the complainant in order to mislead the Authority did not disclose the material fact of the defaults committed by her by giving ignorance to the offer of possession which were part of the sale consideration of the said unit.
- s. That the respondent is also liable to recover maintenance charges from the complainant @Rs. 20.50/ per sq. ft. per month w.e.f offer of possession to realization of this present complaint along with maintenance charges.
- t. That the complainant was given countless opportunities for clearing its dues and taking possession of the said unit but the complainant voluntarily ignored it but continued to earn profit from the respondent.



- u. That the project and the unit of the complainant is ready for possession and the respondent is not in the position to delay possession charge or as the default was made on the part of the complainant. The respondent since the inception has always honored its liability as agreed upon in the application form and MOU but on the other hand the complainant failed to honored its liability and by finesse tactics avoided possession of the said unit with a mindset to dupe the company and for grabbing/extorting money from the respondent. The respondent has duly honored its part of the obligations without any delay but the complainant with malafide intentions, is arm twisting the respondent to earn unreasonable profit and commercial gain from the respondent. The instant complaint is one such example of her intentions. No cause of action has arisen in favour of the complainant to file the complaint. The unit is ready for possession, even the occupation certificate for unit in question is in place and it is for the best reasons known to the complainant, she distorted the facts, she is asking for the DPC and assured returns refund of the deposited monies which cannot be allowed as there are many similar placed customers and any such order of refund will be definitely set a bad precedent causing a grave business losses to the company without any fault on its part.
- v. That the respondent has fulfilled its contractual obligations under the buyers' agreement however despite that the complainant has failed to clear the outstanding dues. The complainant is default of their contractual obligations and paid an amount of Rs.1,24,1860/- and Rs. 2,83,500/- assured return adjusted for 10.5 months by the respondent



against the total consideration amount that is Rs. 37,07,686/- towards the booking is raising these frivolous issues in order to escape from her liability cast upon her by the virtue of the terms of allotment and unjustly enrich herself. Therefore, the complainant is not entitled to any relief whatsoever. The complainant is default in making total consideration amount as per the term and condition mentioned in the agreement.

- w. That the respondent who is due the maintenance cost of maintaining the commercial building and the unit allotted to the complainant. As per clause of the builder buyer agreement executed between the parties, the respondent becomes liable to receive the maintenance cost of the project the Occupation Certificate has been received, which the complainant has failed to pay to the respondent. Thus, it becomes the duty of complainant to take possession of the allotted unit, execute a conveyance deed in its favour and pay the due maintenance cost qua the unit allotted to the complainant from the period beginning from August 2020 (i.e., 2 months after the receipt of the Occupation Certificate of the project).
- x. That the respondent had requested the complainant to execute a conveyance deed in its favour immediately after receiving the Occupancy Certificate of the project. However, due to reasons unknown, the complainant has failed to take the possession of the unit and further chose not to execute the conveyance deed. However, it is interesting to note that the complainant filed the present complaint before the Authority, despite the requests of the respondent.

8. 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 based on these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

9. 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

10. 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

11. 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.

12. 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:

F.I Objection regarding maintainability of complaint on account of complainant being investor.

13. The respondent took a stand that the complainant is investor and not consumer and therefore, she is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainant is buyer, and she has paid a considerable amount to the respondent-promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below 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.

14. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter



and complainant, it is crystal clear that the complainant is allottee(s) as the subject unit was allotted to her by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of the promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

F.II Objection regarding regarding the circumstances being 'force majeure.

15. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as construction ban due to orders passed by various Authorities including orders passed by National Green Tribunal (hereinafter, referred as NGT) COVID-19 outbreak, certain environment restrictions, weather conditions in NCR region and non-payment of instalment by different allottees of the project, etc. But all the pleas advanced in this regard are devoid of merit. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. The events taking place such as restriction on construction due to weather conditions were for a shorter period of time and are yearly one and do not impact on the project being developed by the respondent. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

G. Findings on the relief sought by the complainants



G.I Direct the respondent to provide possession of unit along with due assured return.

16. In the present case, the unit allotted to the complainant is virtual space, and there is no clause in the buyer's agreement that provides for the handing over of physical possession of the unit to the complainant. Hence, no direction regarding the handing over of possession can be given to the complainant, as the allotted unit is virtual space.
17. The factual matrix of the case reveals that the complainant is seeking unpaid assured returns on monthly basis as per memorandum of understanding dated 06.12.2011 at the rates mentioned under clause 4 of the memorandum of understanding. It is pleaded that the respondent 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 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.
18. An allotment letter was issued by the respondent to the complainant on 02.11.2011. Thereafter, a memorandum of understanding was executed between the parties on 06.12.2011, in both the documents, a specific unit type and area (IT office space, 500 sq.ft.) has been allotted to the complainant for a total sale consideration of Rs. 32,75,000/-. As per clause 4 of the MoU, the respondent has promised to pay an amount of Rs.60/-per sq.ft. per month on 500 sq.ft. in the form of assured return from 01.12.2011



till the offer of possession of the space. Thereafter, the developer shall pay Rs. 50/- per sq. ft. per month on 500 sq. ft. as assured rental till the offered space is leased out to intended lessee.

19. 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.
20. The promoter is liable to pay that amount as agreed upon. Moreover, a MoU defines the builder-buyer relationship. So, it can be said that the MoU for assured returns between the promoter and allottee arises out of the same relationship and is marked by the said MoU.
21. In the present complaint, the assured return was payable as per clause 4 of MoU, which is reproduced below for the ready reference:

4. Assured Return

"That the Developer will pay Rs. 60/- (Rupees Sixty Only) per sq. ft. per month on 500 sq.ft. as an assured return to the Allottee(s) from 01-12-2011 till offer for possession of the Space Thereafter the Developer shall pay Rs. 50/- (Rupees Fifty Only) per sq. ft. per month on 500 sq. 12. as assured rental till the offered Space is leased out to intended Lessee. The Developer has represented to the Allottee(s) that the possession of the Said Unit shall be handed over by the Developer to the Allottee(s) but in the event of virtual space the space will be registered in favour of Alloteel(s) and handed over to the Lessee within a maximum period of 2 (two) years after approval of Building plans of the Said Project from competent authorities of the Said Project subject to force majeure. That the Allottee (s) hereby agrees

accepts and confirms the authority and power of the Developer for any variation or change in the location or area of the Said Unit allotted to him and that the allotment is provisional."

22. In light of the reasons mentioned above, the Authority is of the view that as per memorandum of understanding dated 06.12.2011, 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 06.12.2011. 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 December, 2019. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return in terms of clause 4 of memorandum of understanding dated 06.12.2011 at the agreed rate i.e., @ Rs.60/-per sq.ft. per month from the date the payment of assured return has not been paid i.e., January 2020 to June 2020. Thereafter, the developer shall pay Rs. 50/- per sq. ft. per month on 500 sq. ft. as assured rental till the offered space is leased out to intended lessee.

G.II. Delay possession charges.

23. **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 promoters, 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]

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.

24. 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.
25. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules, ibid has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., the marginal cost of lending rate (in short, MCLR) as on date i.e., 14.01.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
26. 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—

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 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;”

27. 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 interest?
28. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottee on account of provisions in the memorandum of understanding. The assured return in this case is payable as per clause 4 of the MoU dated 06.12.2011. The respondent agreed to pay an amount of Rs. 60/- per sq.ft. per month from 01.12.2011 till the date of offer of possession of the space. Thereafter the developer shall pay Rs. 50/- per sq.ft. per month on 500 sq.ft. as assured rental till the offered space is leased out to intended lessee.
29. By way of assured return, the promoter has assured the allottee that she would be entitled for this specific amount till offer of possession. The purpose of delayed possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to 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. In the present matter the respondent has paid the assured return of ₹31,24,186/- till December 2019. The delay possession charges are payable from 04.12.2017 till offer of possession and the respondent has already paid assured return for the said period except for 5 months therefore, the respondent cannot be held liable to pay interest for the period he has already compensated by way of paying assured return and hence no delay possession charges can be allowed. In the present case, the assured return was payable till offer of possession of the unit. The project is considered habitable or fit for occupation only after the grant of occupation certificate by the competent authority.

30. The Authority would express its views regarding the concept of a "valid offer of possession". It is necessary to clarify this concept because, after a valid and lawful offer of possession, the liability of the promoter for the delayed offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, the liability of the promoter continues till a valid offer is made and the allottee remains entitled to receive interest for the delay caused in handing over of possession.
31. In the present case, the essential condition for a valid offer of possession has not been met while issuing the offer of possession dated 15.07.2019. The Occupation Certificate for the project in which the subject unit is located was issued by the competent authority on 02.06.2020. However, the respondent had offered possession for the fit-out of the allotted unit prior

to obtaining this certificate, specifically on 15.07.2019. Consequently, this offer does not constitute a valid offer of possession. The complainant has mentioned in the facts of the complaint that the respondent has paid assured return till December, 2019 but stopped paying the same from 01.01.2020 and the relief sought by the complainants regarding assured return is from 01.01.2020 till date of receipt of occupation certificate i.e., 02.06.2020.

32. Hence, the Authority directs the respondent/promoter to pay assured return to the complainant at the rate of Rs.60/- per sq.ft. per month from the date when the payment of the assured returns has not been paid i.e., 01.01.2019 till date of receipt of occupation certificate. Thereafter, the developer shall pay Rs. 50/- per sq. ft. per month on 500 sq. ft. as assured rental till the offered space is leased out to intended lessee.

H. Directions of the authority

33. 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) of the Act:

- i. The respondent is directed to pay the assured return at the rate Rs.60/- per sq.ft. as per agreed terms of MoU per month from the date the payment of assured return has not been paid i.e., January 2020 till date of receipt of occupation certificate i.e., 02.06.2020. Thereafter, the respondent/builder would be liable to pay monthly assured returns



- @50/- per sq.ft. per month on 500 sq.ft. till the offered space is leased out to intended lessee.
- ii. The respondent is directed to pay arrears of accrued assured return as per memorandum of understanding dated 06.12.2020 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 @9.10% p.a. till the date of actual realization.
- iii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
34. Complaints stand disposed of.
35. File be consigned to the registry.

(Ashok Sangwan)
Member

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 14.01.2025