

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

Complaint no. 4837 of 2021
Date of filing complaint 13.12.2021
Date of decision 14.01.2025

1. Vikas Kumar
2. Shakuntla Khatri

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

Complainants

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)

Complainants

Sh. Geetansh Nagpal (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainants/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 provisions of the Act or the rules and regulations made there under or to the allottees 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.	49,50,51 Tower A, 6 th Floor (page no. 23 of complaint)
8.	Unit type	Virtual space
9.	Unit area admeasuring	Unit no. 6, 6 th floor, 500 sq. ft. (page no. 20 of complaint)
10.	Date of agreement	07.09.2016 (page no. 18 of complaint)
11.	Handing over possession of the unit in non-leasing arrangement cases	<i>34. In cases where the Allottee has not opted for leasing arrangement, the company upon Occupation Certificate from the Government Authority shall offer in writing possession of the unit to the Allottee in terms of this agreement to be taken within 30 days from the date of issue of such notice and the company shall give possession of the unit to the allottee provided the allottee is not in default of any of the terms and conditions of</i>

		<i>this agreement and has complied with all provisions, formalities, documentation, etc., as may be prescribed by the company in this regard. The allottee shall be liable to pay the maintenance charges from the date referred in the offer of possession of the unit.....</i>
12.	Clause of assured return	<p><i>Annexure A-1 (a) The Developer further assures the Allottee(s) that they will continue to pay the Assured return of Rs. 28,646/- per month from 01.08.2017 till offer possession of the unit is offered.....</i></p> <p><i>34. The Company will pay to the Allottee Rs 29000/- per month as committed return for up to three years from the date of notice of possession of the Unit or till the same is put on lease, whichever is earlier. After the Unit is put on lease. Then payment of the aforesaid committed return will come to an end and the Allottee will start receiving lease rental in respect of the Unit as described hereinafter.</i></p>
13.	Due date of possession	NA
14.	Total sale consideration	Rs. 27,89,975/- (as per page no. 5 of reply)
15.	Amount paid by the complainants	Rs. 27,89,975/- as per statement of account dated 09.12.2022
16.	Offer of possession for fit out	15.07.2019 (page no. 14 of reply)
17.	Occupation certificate	02.06.2020 (page no. 16 of reply)
18.	Assured Return paid	Rs. 29,000/- per month from 2016 to till 2019

B. Facts of the complaint

5. The complainants have made the following submissions in the complaint: -
- a. That on 07.09.2016, complainants booked a unit admeasuring super area of 500 sq. ft. at basic rate of Rs.4,450/- 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 amount of Rs.18,75,000/-.
- b. That the due date of handover of possession is silent in the agreement in lieu of the clever move and fraudulent tactics of the respondent. After making payment to the tune of Rs. 18,75,000/- the one-sided agreement was offered to the complainants for signing purposes. Having left with no other option as a considerable amount was already paid by the complainants, the complainants had to agree to the non-negotiable arbitrary terms of the respondent as there was no option of modifying it or even deliberating it with the builder. The complainants were subjected to unethical trade practice as well as subject of harassment, no due date or absence of handing over of possession clause, penalty clause on failure, many hidden charges which was forcedly imposed on buyer at the time of possession as tactics and practice used by builder guise of a biased, arbitrary and discriminatory.
- c. That the total basic consideration cost of the said unit is Rs. 22,25,000/- along with Rs. 1,95,000/- towards external development charges and Rs. 75,000/- towards maintenance security and sum of Rs. 22,25,000/- has already been paid by the complainants in time bound manner along with other charges as aforesaid.
- d. That the builder in last 4-5 years, many time made false promises for possession and lease of space. However, the current status of project is still not completed by builder, it has led to the breach the trust and agreement. As per section 19(6) of the Act, 2016 complainants have fulfilled his responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement.

Therefore, the complainants are not in breach of any of its terms of the agreement as no demand has been made by the builder.

- e. That the respondent has indulged in all kinds of tricks and blatant illegality in booking of unit and drafting of agreement with a malicious and fraudulent intention and caused deliberate and intentional huge mental and physical harassment of the complainants and their family and the complainants are eminently justified in seeking possession of unit along with due payment towards assured return as well as delayed
- f. 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's pocket seems bleak and that the same is evident of the irresponsible and desultory attitude and conduct of the respondent, consequently injuring the interest of the buyers including the complainants who have spent their entire hard earned savings in order to buy this unit 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 caused the complainants great financial and emotional loss by no paying the assured return as promised in Clause b of the flexi payment plan as laid down in annexure A-1 of the unit buyer's agreement dated 07.09.2016. The assured return of Rs. 28,646/- has been paid only up till January 2020 and thereafter, the respondent arbitrarily and illegally stopped making the payment towards assured return and neither offered the possession till date.
- g. That the cause of action to file the instant complaint has occurred within the jurisdiction of the Authority as the IT 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 complainants have 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 complainants are 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 complainants before the hon'ble commission i.e., assured return which is the scheme of delay in possession same is paid to complainants 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 complainants have 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, it is germane to mention herein 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, 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 complainants have not approached the Authority with clean hands and bonafide intentions and that depicts in his action as she has not paid the instalments 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 complainants 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 complainants till the "offer of possession" i.e., sent to the complainants 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 complainants are in win-win situation. If the respondent completes the construction and offer the possession to the

complainants, still the complainants 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 complainants. 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 complainants have 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 complainants as well as the respondent had contemplated at the very initial stage while signing the "buyer's agreement" that some delay might occur in future and that is why under the force majeure clause as mentioned in the " buyer's agreement ", it is duly agreed by the complainants 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 complainants 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 " buyer's agreement." Hence, the intended date for offer of possession of the said flat was rescheduled.
- l. That, the respondent was adhering to the " buyer's agreement " entered into between the parties, and willing to adjust for further period in the final demand but subject to the payment by the complainants, the said unit booked by the complainants is a virtual unit

- and the actual physical possession could not be done and the same is also not part of the ' buyer's agreement.'" The respondent has received completion certificate on 02.06.2020 and willing to execute "agreement of lease deed" subject to the compliance of " buyer's agreement ".
- m. That on account of wilful breach of terms of buyer's agreement by failing to clear the outstanding dues despite repeated requests, the complainants have 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 default of the complainants in making timely payments and complying with other obligations is duly covered under the buyers' agreement. The relevant clause stating the same is reproduced herein for the ready reference of the Authority.
- o. 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.
- p. That the respondent had already obtained the part Occupation Certificate for the very project, Mindspace an office space with the respondent at project launch, the named as " Mind space". Respondent has also intimate the complainants that the OC has obtained on your booked office space in project Mindspace and to take the possession of

the office space but the complainants neither contact to respondent nor taken the possession of the office space.

- q. That the complainants are 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.
- r. That the complainants after satisfying herself about the location, approvals and possession timelines, high returns on investment vide her application form expresses his intent to own the commercial space on assured returns scheme.
- s. That the complainants 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.
- t. That the respondent is also liable to recover maintenance charges from the complainant's @Rs. 20.50/ per sq. ft. per month w.e.f. offer of possession to realization of this present complaint along with maintenance charges.
- u. That the complainants are under a contractual obligation to pay and clear all her dues towards the company before proceeding to entitle the possession of the allotted unit.



- v. That the complainants was given countless opportunities for clearing its dues and taking possession of the said unit but the complainants voluntarily ignored it but continued to earn profit from the respondent.
- w. That the project and the unit of the complainants are ready for possession and the respondent is not in the position to delay possession charges or as the default was made on the part of the complainants. The respondent since the inception has always honoured its liability as agreed upon in the application form and buyer's agreement but on the other hand the complainants failed to honoured its liability and by finesse tactics avoided possession of the said unit with a mind-set to dupe the company and for grabbing/extorting money from the respondent. The respondent has duly honoured its part of the obligations without any delay but the complainants 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 his intentions. No cause of action has arisen in favour of the complainants 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 complainants, 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.

- x. That the respondent has fulfilled its contractual obligations under the buyers' agreement however despite that the complainants have failed to clear the outstanding dues. The complainants are 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 complainants are not entitled to any relief whatsoever. The complainants are default in making total consideration amount as per the term and condition mentioned in the agreement.
- y. That the respondent who is due the maintenance cost of maintaining the commercial building and the unit allotted to the complainants. 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 complainants have failed to pay to the respondent. Thus, it becomes the duty of complainants 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 complainants from the period beginning from



August 2020 (i.e., 2 months after the receipt of the Occupation Certificate of the project).

- z. That the respondent had requested the complainants to execute a conveyance deed in its favour immediately after receiving the Occupancy Certificate of the project. However, due to reasons unknown, the complainants have 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 complainants 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 complainants.

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 allottees 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 complainants being investors.

13. The respondent took a stand that the complainants are investors and not consumers and therefore, they are 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 complainants are buyer, and they have 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 complainants, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them 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 "allottees" and there cannot be a party having a status of "investor". Thus, the contention of the promoter that the allottees being investors 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

F.I Direct the respondent to give possession of the unit as well as assured return.

16. In the present case, the unit allotted to the complainants is virtual space which is specifically mentioned under clause 1 of buyer's agreement dated 07.09.2016. The relevant portion of clause 1 of buyer's agreement has been reproduced below:

"1.1 in accordance with and subject to the terms and conditions set out in this agreement, the company agrees to sell to the allottee and the allottee hereby agrees to purchase the unit in the project as per details mentioned below.

Unit no: 049,050,051

Floor: 6th -

Tower: A

Type: Virtual IT Space....."

17. Moreover, as per Clause 34(A), at the request of the allottees, the company agrees to lease the unit, either individually or in combination with other adjoining units, on behalf of the allottees, starting from the date of signing this agreement. Furthermore, as per Clause 34(A)(a), the company will pay

the allottees a committed return of Rs. 29,000/- per month for up to three years from the date of the notice of possession of the unit or until the unit is leased, whichever is earlier. After the unit is put on lease, then payment of the aforesaid committed return will come to an end and the allottees will start receiving lease rental in respect of the unit. The relevant clauses are reproduced below:

“34(A)(a). Leasing Arrangement:

“A. At the request of the Allottee, the Company agrees to put the Unit, individually or in combination with other adjoining units, on lease, for and on behalf of the Allottee, from the date of signing of this Agreement. The Allottee has clearly understood the general risks involved in giving any premises on lease to third parties and has undertaken to bear the said risks exclusively without any liability whatsoever on the part of the Company. It is further agreed that:

(a) the company will pay to the allottee Rs.29,000/- per month as committed return for up to three years from the date of notice of offer of possession of the unit or till the same is put on lease, whichever is earlier. After the unit is put on lease, then payment of the aforesaid committed return will come to an end and the Allottee will start receiving lease rental in respect of the Unit as described hereinafter.”

18. As per above-mentioned clause, the allottees agrees to put the unit on lease where the company pay the allottees Rs. 29,000/- per month as committed return for up to three years or till the unit is put on lease, whichever is earlier, After the committed return will come to an end, the allottees will start receiving lease rental in respect of the said unit. Furthermore, there is no clause for handing over of physical possession of the unit if the allottees opts for leasing arrangement. Additionally, in the pleadings, the complainants themselves stated that the unit is “Virtual IT Space” and the same is also mentioned in clause 1.1 of the buyer’s agreement which was signed by both the complainants. Hence, no direction regarding the handing over of possession can be given to the complainants, as the allotted unit is virtual space.

19. The factual matrix of the case reveals that the complainants are seeking unpaid assured returns on monthly basis as per buyers' agreement dated 07.09.2016 at the rates mentioned under clause 33 of the buyer's agreement. 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.
20. A buyers' agreement was executed by the complainants and the respondent on 07.09.2016 in which specific unit type and area (IT office space, 500 sq.ft.) has been mentioned for a total sale consideration of Rs. 27,89,975/-. Moreover, as per clause 33 & 34 of the buyer's agreement, the respondent has promised to pay an amount of Rs. 28,646/- per months on in the form of assured return from 01.08.2017 till the offer of possession of the unit is offered. Thereafter the developer shall pay Rs. 29,000/- per month as committed return for up to three years from the date of notice of possession of the unit or till the same is put on lease, whichever is earlier.
21. 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 allottees have a right to approach the authority for redressal of his grievances by way of filing a complaint.

22. The promoter is liable to pay that amount as agreed upon. Moreover, an agreement defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottees arises out of the same relationship and is marked by the said buyer's agreement.
23. In the present complaint, the assured return was payable as per clause 33 of agreement, which is reproduced below for the ready reference:

33. Assured Return

"Where the allottee has opted for payment plan as Annexure-A attached herewith and accordingly, the company has been paying/agreed to pay Rs.28,646/- per months by way of assured return to the allottee from 01.08.2017 till the date of possession of the unit. The return shall be inclusive of all taxes whatsoever payable or due on the return."

24. In light of the reasons mentioned above, the Authority is of the view that as per buyer's agreement dated 07.09.2016, 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 buyer's agreement dated 07.09.2016. Accordingly, in the interest of natural justice, the liability of the respondent to pay assured return as per buyer's agreement is still continuing. The respondent has paid assured return to the complainants 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 33 of buyer's agreement dated 07.09.2016



at the agreed rate i.e., @ Rs.28,646/-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.

25. Furthermore, as per clause 34 of the agreement dated 07.09.2016 it was promised and assured by the respondent to the complainants that an amount of Rs.29,000/- per month will be paid as committed return for up to three years from the date of notice of offer of possession of the unit or till the same is put on lease, whichever is earlier. After the unit is put on lease, then payment of the aforesaid committed return will come to an end and the Allottee will start receiving lease rental in respect of the Unit as described hereinafter. The relevant portion of clause 34 of buyer's agreement has been reproduced below for the ready reference:

34. Leasing Arrangement:

"A. (a) the company will pay to the allottee Rs.29,000/- per month as committed return for upto three years from the date of notice of offer of possession of the unit or till the same is put on lease, whichever is earlier. After the unit is put on lease, then payment of the aforesaid committed return will come to an end and the Allottee will start receiving lease rental in respect of the Unit as described hereinafter ..."

26. As per section 11(4)(a) of the Act of 2016, the promoter is responsible for all obligations and responsibilities as per the provisions of the Act or the terms agreed as per agreement for sale. The relevant portion of section 11(4)(a) is reproduced below:

(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 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:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

27. In the present case, the respondent has made offer of possession for fit out on 15.07.2019 but the occupation certificate of the tower in which the unit of the complainants are situated was received on 02.06.2020. Thereafter, offer of possession made on 15.07.2019 is not a valid offer of possession and no valid offer of possession has been made after obtaining of occupation certificate. Neither any document is placed on record nor any submission has been made by either party regarding leasing of the unit, therefore, the complainants are entitled for assured returns till the offered space is leased out to intended lessee from the date of occupation certificate i.e., 02.06.2020. Thereafter, the respondent is liable to pay committed returns as per clause 34(A) of the agreement.

II. Delay possession charges.

28. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. However, proviso to section 18 provides that where an allottees 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.

29. 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.
30. 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., <https://sbi.co.in>, 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%.
31. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, 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

32. The Authority further observes that now, the proposition before the Authority whether an allottees 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?
33. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of a provision in the buyer's agreement. The assured return in this case is payable from the date i.e., 01.08.2017 till offer of possession is made to the complainants-allottees. If we compare the assured return i.e., Rs.28,646/- per month with delayed possession charges i.e., Rs.25,807/- approximately payable under proviso to section 18 (1) of the Act of 2016, the assured return is much higher. By way of assured returns, the promoter has assured the allottees that they will be entitled for this specific amount till valid offer of possession. Accordingly, the interest of the allottees are protected even after the due date of possession is over as the assured return are payable till offer of possession. The purpose of delayed possession interest after due date of possession is over and payment of assured return after due date of possession is over are the same and safeguard the interest of the allottees as their money is continued to be used by the promoter even after the promised due date and in return, they are paid either the assured return or delayed possession interest, whichever is higher.

34. Accordingly, the Authority decides that in cases where assured return is reasonable and comparable with the delayed possession interest under section 18 and assured return is payable even after due date of possession till the valid offer of possession of the said unit. The allottees shall be entitled to assured return or delayed possession interest, whichever is higher without prejudice to any other remedy including compensation. 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.
35. In the present case, the essential condition for a valid offer of possession has not been met while issuing 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 complainants have 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 the valid offer of possession.
36. Hence, the Authority directs the respondent/promoter to pay assured return to the complainants at the rate of Rs.28,646/- per month from the date when the payment of the assured returns has not been paid i.e.,

01.01.2020 till date of receipt of occupation certificate. Furthermore, the respondent is directed to pay the committed returns to the complainants as per clause 34(A) of the buyer's agreement.

H. Directions of the authority

37. 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 i.e., Rs.28,646/- per month as per agreed terms of buyer's agreement 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. Furthermore, the respondent is directed to pay the committed returns to the complainants as per clause 34(A) of the buyer's agreement.
- ii. The respondent is directed to pay arrears of accrued assured return as per buyer's agreement dated 07.09.2016 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 @9.10% 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.

38. Complaints stand disposed of.

39. 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

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