

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

Complaint no: 1974 of 2023
Date of Filing: 02.05.2023
Date of First Hearing: 26.09.2023
Date of decision: 14.05.2025

Neeti Singh

Resident of: E-61, Anuvijay Township,
Radhapuram Taluk, Tirunelveli Rural, Tamil
Nadu- 627120

Complainant**Versus****M/s VSR Infratech Private Limited**

Registered address: A-24, Hill View
Apartments, Vasant Vihar, New Delhi-
110057

Corporate address: Plot No. 14, Ground
Floor, Sector-44, Industrial Area, Gurugram-
122003

Respondent**CORAM:**

Shri Ashok Sangwan

Member**Appearance:**

Mr. Samarth Kapoor (Advocate)

Ms. Shriya Takkar (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 as provided

under the provision of the Act or the rules and regulations made there under or to the allottee as per the memorandum of understanding executed *inter se*.

Project and unit related details.

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

Sr. No.	Particulars	Details
1.	Name of the project	"114 Avenue", Sector 114, Gurugram
2.	Nature of the project	Commercial Project
3.	DTCP license no. and validity status	72 of 2011 dated 27.07.2011 valid up to 20.07.2024
4.	RERA Registered/ not registered	Registered Vide 53 of 2019 dated 24.09.2019 Valid till 31.12.2019 Vide 13 of 2020 dated 30.09.2019 Valid till 31.12.2020
5.	Unit no.	H-52 on Lower Ground floor (LGF) (Page 35 of complaint)
6.	Unit area admeasuring	384.45 sq. ft. (Super Area) (Page 35 of complaint)
7.	MOU dated	15.12.2012 (Page 32 of complaint)
8.	Due date of delivery of Possession	15.12.2015 [Calculated to be 3 years from the date of execution of MOU]
9.	Assured Returns Clause	Article 3 of MOU "3.1 Till the notice of offer of possession is issued, the Developer shall pay to the Allottee an Assured Return in the following manner: a. For the first year, at the rate of Rs. 31.50 (Rupees Thirty-one and Fifty paise) per sq. ft. of super area of premises per month. b. Second year onwards, after the receipt of entire Total premium, at the rate of the 63/- (Rupees Sixty-Three only) per sq. ft. of super area of premises per month. It is further clarified that in case the Allottees fail to pay the balance amount as stipulated herein, the Developer shall have the right to cancel the allotment/terminate this MOU. In the

		<p>eventuality this MOU and the allotment stands terminated, the Company shall return the amount without any interest, received from the Allottee towards Total Premium to the Allottee after adjusting the expenses made in this respect.</p> <p>c. After completion of construction, till tenant is inducted possession is delivered to tenant and the lease commences and rental is received by the allottee from the tenant, the developer shall pay to the allottee(s) an Assured return @ Rs. 52.50/- (Rupees Fifty-Two and Fifty Paise only) per sq. ft. of super area of premises per month. The assured return shall be subject to tax deduction at source, which shall be payable on or before 7th day of every English Calendar month." (As per MOU, at Page 39 of complaint)</p>
10.	Builder Buyer Agreement	Not Executed
11.	Basic sale consideration	Rs.24,22,035/- (As per MOU page no. 37 of complaint)
12.	Amount paid by the complainant	Rs. 25,04,361/- (As per intimation of termination letter sent by respondent at page 78 of reply and agreed to by respondent in para 4 of its pleadings at page 2 of reply)
13.	Assured Returns paid by respondent to the complainant till December, 2019	Rs. 12,46,939/ (As alleged by respondent at page 76 of reply, to be clarified by complainant)
14.	Occupation Certificate	17.02.2021 (Taken from CR/3530/2019 decided on 10.05.2023 of same project)
15.	Offer of Possession	05.05.2021 (Page 48 of complaint and page 74 of reply)
16.	Intimation of Cancellation	10.02.2022 (Page 77 of reply)
17.	Reply to intimation of cancellation by complainant	Letter dated 07.03.2022, 12.05.2022, 27.06.2022, 27.03.2023 (Page 55, 58, 61 and 119 of complaint)
18.	E-mail by respondent to clear the outstanding amount due	03.05.2022, 27.09.2022 (Page 57 and 64 of complaint)
19.	Demand Letter dated	05.12.2022- Bulk Electricity and MCG tax amounting to Rs. 1,83,411/- (Page 69 of complaint)

		18.03.2023- Fit out charges amounting to Rs. 3,31,165/- (Page 81 of reply)
20.	Lease Deed	21.09.2022 (Taken from Stamp paper at page 71 of complaint)

Facts of the complaint:

3. The complainants have made the following submissions by way of filing the present complaint: -
 - a) That in the year 2012, the respondent launched the project "114 AVENUE" at Sector-114, Gurugram. The respondent had represented to the complainant that the respondent is very ethical business house in the field of construction of commercial project and in case, the complainant would invest in the project of respondent then respondent would deliver the possession of proposed commercial unit on the assured delivery date as per the best quality assured by the respondent. The respondent showed the brochures and advertisement material of the said project to the complainant given by the respondent and assured that the allotment letter and builder buyer agreement for the said project would be issued to the complainant within one week of booking to be made by the complainant. The complainant, while relying on the representations and warranties of the respondent and believing those to be true had agreed to the proposal of the respondent to book the commercial unit in the project of respondent.
 - b) That the complainant booked a commercial unit no. H-52 located on lower ground floor, having super area of 384.45 sq. ft. in the said project for a basic sale consideration of Rs.24,22,035/-. The respondent has not yet executed buyer's agreement with the complainant even after repeated requests made by the complainant.
 - c) That, on 15.12.2012, the respondent had executed a Memorandum of Understanding (MoU) in favor of the complainant. The complainant has already paid the full and final payment of Rs. 25, 04,361/- to the respondent

against the total sale consideration of Rs.24,22,035/- and as per Article – 3 of the MOU, the complainant has chosen the assured return plan.

- d) That, as per the MoU the respondent was obligated to and undertook to pay the assured return to the complainant "Till the notice for offer of possession is issued, the developer shall pay to the allottee an assured return at the rate of Rs.63/- per sq. ft. of super area of the premises per month." The respondent was paying assured returns on time till March 2017. Thereafter, the respondent became very irregular in payment and paid the assured returns to the complainant till December 2018 after harassing her for a long time.
- e) That, thereafter, the assured returns were not paid from January 2019 and whereas the respondent had issued offer of possession letter in the month of June 2021, through a letter dispatched through speed post. The assured return is due/pending as on April 2023 which workout to Rs.11,70,648/-.
- f) The following charges have been demanded by the respondent through various letters as mentioned below:-

Sr. No.	Description	Amount (INR)	Allottee(s) Remarks
1.	Interest Free Maintenance Security	57,658	Mentioned in the MOU and agreed.
2.	Power Back-up Charges (PBC)	53,823	Mentioned in the MOU and agreed
3.	Electrical Connection Charges	28,834	Not Mentioned in MOU
4.	Air Conditioning Charges (ACC)	76,890	In Para No.4.3 at page No.10 and para-No.6.3 at page No.11 of the MOU, which inter-alia provides and says that AIR Conditioning Charges (ACC) are applicable after buyer's agreement, which is not yet executed by the developer even though the premise is already leased out, hence it is not a part of MOU. Also, kindly refer the Annexure C of agreement between M/S VSR & M/S Reliance Projects & Property Management Services Limited on page no 44. Under the heading HVAC:

			"The Lessee will do install own HVAC system inside the leased premises at its cost as per our specification & drawing." Hence, air conditioning charges should be removed from possession demand
5.	Administrative Charges	15,000	Not mentioned in MOU
6.	Advance Maintenance Charges for 18 months	83,041	Not mentioned in MOU.
7.	CGST @ 9% on SN 2 to 6	23,183	To be re-calculated for SN 2 only.
8.	SGST @ 9% on SN 2 to 6	23,183	To be re-calculated for SN 2 Only
9.	Stamp Duty and registration Charges (5%/6%/7% of BSP plus 15,000/-)	1,73,894	Will be paid directly by allottee to Registration office at the time of registration of property.
10.	Property tax charges levied by Gurugram Development Authority /Municipal Corporation Gurugram till the date of OC.	19,431	The property is not registered yet. If at all these charges have to be paid before the registration of the property, the allottee will pay directly to concerned authorities. The court is requested to check the legality for such demand and impose suitable penalty on builder.
11.	Property tax charges levied by Gurugram Development Authority /Municipal Corporation Gurugram from the date of OC	6,415	The property is not registered yet. If at all these charges have to be paid before the registration of property, the allottee will pay directly to concerned authorities. The court is requested to check the legality for such demand and impose suitable penalty on builder.
12.	Electricity connection charges with GST	54,438	Not Mentioned in MOU.

- g) That, it is pertinent to mention here that as per the Schedule - 3 Payment Plan as mentioned at page No.14 of MOU, wherein it is mentioned that the Interest Free Maintenance Security (IFMS) and power back-up charge only are to be paid by the allottees and whereas other charges, as mentioned at Serial No.3, 4, 5, 6 and 12 are not the part of MOU, hence, cannot be demanded, as those were never agreed upon between the parties. The charges as mentioned at Serial no. 9, 10 and 11 shall be paid by the allottee directly to the State Government concerned authorities.

- h) That the complainant kept requesting the respondent and had left no stone unturned to make the rich to the desk of the respondent including but not limited to personal approach, e-mail, registered letters, etc. for getting assured returns but nothing fell on deaf ears of the respondent.
- i) That the complainant wrote an e-mail to the respondent with a request to convene a meeting at the corporate office of the respondent on 13.03.2023 afternoon; vide which the respondent was requested to remove the charges, from the possession demand, which are not part of the MOU. Last meeting was held at the corporate office of the respondent on 22.03.2023, in which following charges were additionally demanded by the respondent without issuing any signed document: -

Sr. No.	Description	Amount (INR)	Allottee(s) Remarks
1.	Reliance Work with 18% GST	2,26,825	Not Mentioned in MOU. However, the respondent has not made it clear that how much amount has been incurred by the respondent for removing the fit outs such as fittings and fixtures. The demand in this regard made by the respondent is out and out illegal and unjustified.
2.	Brokerage Charges	1,04,340	Not Mentioned in MOU

- j) That the respondent was requested through letter dated 27.03.2023, either to pay the above said pending assured return amount of Rs.11, 50,464/- at the earliest as possible so that the complainant may clear all the dues of the respondent or otherwise to adjust dues of complainant of Rs.1, 21,179/- in the assured returns of Rs.11, 50,464/- and to pay the remaining amount of the assured returns to the complainant to the tune of Rs.10, 29,285/-.
- k) That, in backdrop, it is submitted that through a letter dated 10.02.2022, the respondent illegally, unlawfully and arbitrarily has issued a cancellation letter dated 10.02.2022, whereby the unit of the complainant alleged to have been cancelled by the respondent.

- l) That, upon receipt of the cancellation letter, the complainant approached the respondent with a request to revoke the cancellation letter being null, void, ab-initio, no nest in the eyes of law and all this was conveyed by the complainant to the respondent through a letter dated 07.03.2022. On receipt of the letter dated 07.03.2022, the respondent had admitted his fault, whereby assured the complainant that this letter of cancellation was served upon complainant mistakenly and further assured the complainant that her unit has not yet been cancelled by the respondent. The complainant again requested the respondent to pay her assured returns amount of Rs.10,29,285/-, which excludes the deduction of Rs.1,21,179/- on account of IFMS and PBC and also to handover the possession of her unit bearing no. H-52 at the earliest, on which the respondent assured the complainant to handover the possession of the unit as soon as possible.
- m) That, on 03.05.2022 the respondent sent an e-mail to the complainant vide which the respondent had assured the complainant that her assured returns shall be paid to her excluding the period of 9 months (COVID exemption as per RERA guidelines). Upon receipt of letter dated 03.05.2022, the complainant requested the respondent through letter dated 12.05.2022, to share the copy of guidelines of RERA issued in regard to exemption /dispensing /excluding the period of 9 months of COVID-19 for assured returns. Through the letter dated 12.05.2022, the respondent was made aware of the fact that the respondent was silent with regard to the assured return in the letter dated 03.05.2022. Through the letter dated 12.05.2022, the respondent was requested to pay the interest also to the complainant as per the SBI Lending rates or the interest rate charged by the respondent from the allottees on late payment of instalment and the respondent.
- n) That, on 27.09.2022, the respondent wrote a letter to the complainant, vide which the complainant was intimated that the respondent has processes to

lease out the said floor, demanded an amount of Rs.80,284/- from the complainant on account of property tax charges, bulk electricity connection charges with GST, etc.

- o) That, thereafter, the complainant wrote an e-mail dated 09.10.2022, to the respondent, vide which the respondent was called upon to provide the full form of OC and date of OC along with electricity connection charges are already included in the "Possession Demand" what is the reason for repeating demand and also the complainant requested the respondent to send the final list of dues after adjusting the assured returns payment and waiver of contingency.
- p) That, in reply to the said e-mail dated 09.10.2022, the respondent replied through e-mail dated 10.10.2022, whereby it was told to the complainant that the Bulk Electrification Charges are taken for extra Load for 33 KVA from the Substation to the property. It is being charged as per Clause No.5 and 8 of BBA executed between us. It is pertinent to mention here that so far, as on the date of filing of this complaint, no BBA has been executed by the respondent except Memorandum of Understanding.
- q) That, on 05.12.2022, the respondent wrote a letter to the complainant, vide which the respondent had demanded an amount of Rs.1,83,411/- from the complainant after bifurcating as Rs.1,03,126/- along-with Rs.54,439/- as bulk electricity and Rs.25,846/- as MCG tax i.e. Rs.1,83,411/- is balance amount towards the possession due.
- r) That, despite umpteen efforts made by the complainant, the respondent, however, finally shared an undated lease deed, shared on 20.03.2023, with the complainant stating that they have entered into a lease deed with "Reliance Smart", in which it has been told by the respondent that the lease deed is commenced w.e.f. 01.09.2022.

- s) That, as per the MOU, the respondent was required to handover the possession of the said unit to the complainant till 15.09.2015, in terms of the judgment dated 09.02.2021 passed by this Hon'ble Real Estate Regulatory Authority in the complaint No. RERA-GRG-1506 of 2019, titled as "**Deepti Bhardwaj & Another Vs. VSR Infratech**". In this judgment, the Hon'ble Authority has laid down that **"The start date of construction, as admitted by the counsel for the promoter, was of 15.03.2012 and the agreement has not been executed between parties calculated from the date of construction, so the final date of possession is 15.09.2015."** It was also laid down by the Hon'ble Authority that **"The promoter shall not charge anything from the Complainant, which is not the part of MOU and the promoter shall pay delayed possession charges at the prescribed rate from the due date of possession till handing over the possession"**.
- t) That the cause of action accrued in favour of the complainant and against the respondent when complainant had booked the said unit, and it further arose when Respondent failed /neglected to deliver the said Unit. The cause of action is continuing and is still subsisting on day-to-day basis.

Relief sought by the complainant: -

4. The complainant has sought following relief(s)
- I. Direct the respondent to pay assured returns to the complainant.
 - II. Direct the respondent to pay delayed possession charges from the due date of possession, i.e., 15.09.2015.
 - III. Direct the respondent to pay interest @ 18% p.a. on amount of Rs. 25,04,361/- paid by the complainant to respondent against the sale consideration.
 - IV. Direct the respondent to handover the possession of the unit.
 - V. Direct the respondent to waive off and not to charge any charges which are not part of the MOU executed between them.
 - VI. Direct the respondent to pay litigation charges amounting to Rs. 55,000/-.
5. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

Reply by the respondent.

6. The respondent contested the complaint on the following grounds vide its reply dated 22.12.2023: -
- a) That the complainant made an application for provisional allotment of a retail unit bearing no. H-52 having a tentative super area of 384.45 sq. ft located on the lower ground floor in the project developed by the respondent known as "114 Avenue", Sector-114, Gurugram vide an application form.
 - b) That pursuant to the application for the allotment of unit by the complainant, the parties executed a MoU dated 15.12.2012 thereby agreeing to the detailed terms and conditions in lieu of the allotment. That respondent agreed to pay an assured return at the rate of Rs.31.50/- per sq. ft. of the super area for the first year; from the second year at the rate of Rs.63/- per sq. ft. of the super area; and thereafter Rs.52.50/- per sq. ft. after completion of construction, till tenant is inducted possession is delivered to tenant and the lease commences shall pay to the allottee an assured return @ Rs.52.50/- per sq. ft. of super area of premises per month. The complainant accordingly entered into an MOU dated 15.12.2012 with the respondent determining all the rights and liabilities of the parties.
 - c) That as per the MoU, the price of the unit for an area admeasuring 384.45 sq. ft. was Rs.24,22,035/- exclusive of EDC, IDC, Interest Free Maintenance Security (IFMS), Electricity Connection Charges, Power Back up charges, Air Conditioning Charges, service tax and such other levies/cess/VAT as may be imposed by the any statutory authority and subject to the increase and decrease in the super area of the unit.
 - d) That the complainant has made payment of Rs.25,04,361/- including service tax to the respondent till date. However, in addition to the above additional cost the complainant is also supposed to make other payments in the nature of EDC, IDC, Interest Free Maintenance Security (IFMS), Electricity Connection Charges, Power Back up charges, Air Conditioning Charges, service tax and

such other levies/cess/VAT as per the demands raised by the respondent in accordance with the MOU executed between the parties. Further, as per the payment plan attached as Schedule-3 to the MOU, the complainant was liable to make a payment towards Service Tax, IFMS @ Rs.150/- per sq. ft., power backup charges, stamp duty, registration, and other charges at the time of offer of possession. The total amount paid by the complainants till date stands to be Rs.25,04,361/-. That an amount of Rs.6,11,406/- plus interest due and payable on the offer of possession is still pending at the end of the complainant.

- e) That there was no time limit provided under the MoU for handing over the possession of the unit and further handing over the physical possession of the unit was also not the essence as the unit was to be leased out. Thus, time was not the essence of the contract for delivering the possession, however, it was mutually agreed upon that the complainant would be entitled to the benefit of assured returns as per the terms of the MoU. Since the unit of the complainant was cancelled therefore the complainant cannot be held entitled for the assured return or any other lease rentals.
- f) That the respondent was not under any obligation to handover the physical possession of the unit to the complainant as the complainant had authorized the respondent to directly lease out the unit to the intending lessee. It is also pertinent to mention that in ab initio the unit was allotted to the complainant for the leasing purposes only and it was never an understanding between the parties to handover the physical possession of the Unit.
- g) That as per the terms of the MOU, it was also agreed that the respondent will pay an assured return at the rate of Rs.31.50/- per sq. ft. of the super area for the first year; from the second year at the rate of Rs.63/- per sq. ft. of the super area; and thereafter Rs.52.50/- per sq. ft. after completion of construction, till tenant is inducted possession is delivered to tenant and the lease commences shall pay to the allottee(s) an Assured Return @ Rs.52.50/- per sq. ft. of super

area of premises per month. However, the payment of assured return was subject to the force majeure clause as provided under Clause 6.1 of the MOU and other clauses of the MOU. It is submitted that an amount of Rs.12,46,939/- has been paid by the respondent as assured return to the complainant.

- h) That the complainant had miserably failed to make the payment of the outstanding dues, that are due and payable on the offer of possession of the unit in question despite repeated reminders and opportunities, therefore the respondent was constrained to issue the termination/cancellation letter vide Intimation of Termination letter, dated 10.02.2022. The complainant had approached the respondent for the restoration of the unit by assuring to make the payment of the outstanding dues and take the possession of the unit in question, and the complainant had nowhere challenged the cancellation of the allotment. That since the unit of the complainant had not challenged the cancellation and same is not been revoked, therefore there is no privity of contract between the complainant and respondent.
- i) That since the project is already completed and as the complainant had not paid the outstanding dues therefore the cancellation of the unit was not revoked till date, further the respondent has leased out the unit of the complainant to the Reliance Project and Property Management Services Limited and therefore in the light of the above mentioned fact that the unit is been leased out, the complainant cannot be granted the physical possession of the unit. Accordingly, the respondent again issued the demand letter for the fit-out charges, vide demand letter dated 18.03.2023.
- j) That the legislature passed a legislation titled as 'The Banning of Unregulated Deposit Schemes Act, 2019' (hereinafter referred to as "BUDS Act"), with the aim and objective to provide for a comprehensive mechanism to ban the unregulated deposit schemes, other than deposits taken in the ordinary course of business, and to protect the interest of depositors and for matters

connected therewith or incidental thereto. With the enactment of the BUDS Act, the investment return plan/assured return/assured rental linked fell within the ambit of "deposit" and "Unregulated Deposit Scheme" under the BUDS Act. Thus, in pursuant to the provisions of Section 3 of the BUDS Act, all the "Unregulated Deposit Schemes" were barred and all the deposit takers including the Respondent dealing in "Unregulated Deposit Schemes" were stopped from operating such schemes. It is further submitted that in terms of Clause 6.10 of the MOU and all such provisions of the said MOU were void, illegal and unenforceable under the BUDS Act. In view of the above, the respondent is under no obligation to pay the assured returns to the complainant.

k) That it is submitted that the construction and development of the project was miserably affected due to force majeure conditions and the same are enumerated herein below:

- a. The unknown to the landowner (M/s AMD Estates & Developers Pvt Ltd, 18 Pusa Road, Karol Bagh, New Delhi - 110005) and the developer, there was an encroachment by an unauthorized individual Mukesh alias Mahesh on a part of land on which the project was to be built. This encroachment came to the knowledge of the developer at the time when construction was to be started, after obtaining license, and all the requisite sanctions, approval of building plan, etc. The aforesaid individual, filed a civil suit before the Gurgaon District Court and obtained a stay order upon the construction over the suit land in one corner of the project. The company could not start construction over the said suit land, to the extent that the project was re-visited and re-planned and the building plans had to be revised so as to exclude the encroached land as the litigation had become a prolonged one. Thus, in this process, the project was substantially delayed (for approximately 4 years) without any fault of the respondent.
- b. That the project was launched in 2010 and is right on the Dwarka expressway, which was supposed to be completed by the State of Haryana by the end of 2012. The connectivity of Dwarka expressway was promised by the State Government to be completed in 2012. The only approach road to the project in this Dwarka Expressway is likely to take another year or so. There being no approach road available it was initially not possible to make the heavy trucks carrying construction material to the project site and after a great difficulty and getting some kacha paths developed, materials could be supplied for the project which took a lot of extra time. Even now the Govt has not developed and completed the basic infrastructure, despite the fact that EDC/IDC were both deposited with the State Government on time. The Dwarka Expressway was earlier scheduled to be completed by the year 2012 by the State Government of Haryana, but it later failed to develop the said road. In the year 2017, NHAI (National Highway Authority

of India) joined to complete the Dwarka Expressway, but again both the State Government as well as NHAI missed the deadlines, and still the Expressway is incomplete. That in this view of the facts and circumstances as detailed above the Respondent/ Developer can by no means be expected to complete a project which does not even have an approach road to be constructed by the State. Thus, the Respondent cannot be held accountable for the delay in the project and the State of Haryana and NHAI, are responsible, hence answerable for the delay in completing the Dwarka expressway, which in turn has caused the delay of the present project. That non-completion of the Dwarka expressway which in turn affected and hampered the completion of the project in question was beyond the control of the Respondent and a force majeure condition.

- c. In 2012 on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) were regulated. The competent authorities took substantial time in framing the rules and in the process, the availability of building materials including sand which was an important raw material for the development of the said Project became scarce in the NCR as well as areas around it and was thus a force majeure condition for the answering respondent.
- d. The Company faced the problem of subsoil water which persisted for a period of 6 months and hampered excavation and construction work and was thus another force majeure condition.
- e. On 19th February 2013, the office of the Executive engineer, Huda, Division No. II, Gurgaon vide Memo No. 3008-3181 has issued instructions to all Developers to lift tertiary treated effluent for construction purposes from the Sewerage treatment plant in Berhampur.
- f. The contractor of the Project stopped working due to his own problems and the progress of project was completely at a halt due to the stoppage of work at the site. It took almost 9 months to resolve the issues with a contractor (a force majeure condition) and to remobilize the site.
- g. The building plans were approved in January 2012 and Respondent Company had timely applied for environment clearances to competent authorities, which was later forwarded to the State Level Environment Impact Assessment Authority, Haryana. Despite best endeavours, the respondent only got the environment clearance certificate on 28.05.2013 i.e., almost after a period of 17 months from the date of approval of building plans.
- h. The typical design of fifth-floor slab casting took a period of more than 6 months to design the shutting plans by the structural engineer.
- i. The infrastructure facilities are yet to be created by a competent authority in this sector is also a reason. The drainage, sewerage and other facility work has not yet been commenced by competent authority.
- j. There was a stay on construction in furtherance to the direction passed by the Hon'ble NGT.
- k. That the sudden surge in the requirement of labour and then sudden removal has created a vacuum for labour in the NCR region, thus another force majeure condition occurred for the answering respondent.
- l. Moreover, due to the active implementation of social schemes like the National Rural Employment Guarantee and Jawaharlal Nehru National Urban Renewal Mission, there was also more employment available for labourers in their hometown despite the fact that the NCR region was itself facing a huge demand for labour to complete the projects.

- m. That the Ministry of environment and Forest and the Ministry of Mines had imposed certain restrictions which resulted in a drastic reduction in the availability of bricks and a shortage in the availability of Sand which is the most basic ingredient of construction activity. That said ministries had barred excavation of topsoil for the manufacture of bricks and further directed that no more manufacturing of bricks be done within a radius of 50 km from coal and lignite-based thermal power plants without mixing 25% of ash with soil, which resulted in another force majeure condition faced by the answering respondent.
- n. The shortage of bricks in the region has been continuing ever since and the respondent had to wait many months after placing an order with the concerned manufacturer who in fact also could not deliver on time resulting in a huge delay in the project.
- o. That sand which is used as a mixture along with cement for the same construction activity was also not available in abundance as is required since mining Department imposed serious restrictions against the manufacturing of sand from the Aravali region.
- p. In addition, the Govt. had on 8th Nov. 2016 declared demonetization which severely impacted the operations and project execution on the site as the labourer's in the absence of having bank accounts were only being paid via cash by the sub-contractors of the company and on the declaration of the demonetization, there was a huge chaos which ensued and resulted in the labourer's not accepting demonetized currency after demonetization.
- q. That in July 2017 the Govt. of India further introduced a new regime of taxation under the Goods and Service Tax which further created chaos and confusion owing to lack of clarity in its implementation. That ever since July 2017 since all the materials required for the project of the company were to be taxed under the new regime it was an uphill task of the vendors of building material along with all other necessary materials required for construction of the project wherein the auditors and CA's across the country were advising everyone to wait for clarities to be issued on various unclear subjects of this new regime of taxation which further resulted in delays of procurement of materials required for the completion of the project.
- r. That it is further submitted that there was a delay in the project also on account of violations of the terms of the agreement by several allottees. That because of the recession in the market most of the allottees have defaulted in making timely payments and this accounted to a shortage of money for the project which in turn also delayed the project.
- s. Further to name few of the orders which affected the construction activity are as follows: (i) Order dated 10.11.2016 and 09.11.2017 passed by the Hon'ble National Green Tribunal, (ii) Notification/ orders passed by the Pollution control board dated 14.06.2018, 29.10.2018 and 24.12.2018 and (iii) Letter dated 01.11.2019 of EPCA along with orders dated 04.11.2019, 06.11.2019 and 25.11.2019 of the Hon'ble Supreme Court of India.
- t. It is further submitted that the Government of India declared a nationwide lockdown due to COVID-19 Pandemic effective from 24th March, 2020 at midnight. It is submitted that the construction and development of the project was affected due to this reason as well. It is submitted that the hardships being faced due to the prevailing COVID-19 pandemic is not a hidden fact and is squarely covered by the Force majeure clause of the MOU.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the parties.

Written submissions of the complainant

8. The complainant made the following further submissions on 05.05.2025: -
- a) The respondent instead of filing the statement of account, the respondent-imposed interest on the amount, for which the present complaint was instituted and a further revised demand was raised by the respondent to the tune of Rs.14,54,787/- illegally and unlawfully by violating the order of this hon'ble authority to the winds.
- b) That, as is evident that the present complaint was instituted against the illegal and unlawful demand of dues of Rs.6,11,406/-, which respondent told to be outstanding in their reply at the time of Court proceedings but now the respondent by manipulating and violating the Order of this Hon'ble Authority has raised an illegal and unlawful demand by way of statement to the tune of Rs.14,54,787/-

S.No	Particulars	Justification	Reply
1.	Qua IFMS	Clause 4.3 of MOU	Mentioned in MOU and agreed
2.	Air Conditioning Charges	Clause 4.3 of MOU	Kindly refer the Annexure C on Page no 44 of M/S VSR Agreement with M/S Reliance. Under the heading HVAC, it is mentioned that: "The Lessee will do install own HVAC system inside the leased premises at its cost as per our specification & drawing." As per above mentioned fact, the air conditioning is in the scope of M/S Reliance at their cost, hence it is unlawful to charge the same from allottee.

3.	Power backup charges	Clause 4.3 of MOU	Mentioned in MOU and agreed
4.	Administrative Charges	Clause 4.2 and 4.4 of the MOU dated 15.12.2022 have been charged as per the circular dated 02.04.2018 issued by the DTP's Office.	Not Mentioned in MOU, due to which the present lis /complaint was instituted.
5.	Qua Electricity Connection Charges:	These are charges for the supply of electricity within the project, covering the costs associated with establishing the connection to the electricity grid. Annexure C of the Lease Deed relied upon by the Complainant, under the sub-head Electrical, Clause 5 It was specifically agreed between the parties that the <i>"separate energy meter with DHBVN for normal electricity will be provided by the Lessors."</i>	Not mentioned in MOU, due to which the present lis /complaint was instituted
6.	Qua Fit outs charges:	Clause 3.12 of the MOU. Complainant was informed about fit out charges vide letter dated 18.03.2023. Further, the Respondent had completed its scope of work as stated in Annexure C of the Lease Deed and handed over the premises to the Lessee by making it continuous and completing its scope of work. Refer Annexure-C of lease deed entered into between Reliance and Respondent @ page no.114 of the complaint, copy whereof is also marked and annexed herewith as Annexure - A. It is relevant to mention here that as an industry and commercial practice and customs the fit out cost is borne by the allottee as the rent is received by them and post execution of the conveyance deed with the allottee(s) he/she/they would be owners of	As per the agreement between M/S VSR and M/S Reliance, Fit out works have been carried out by M/S Reliance (Leasee) and four months rent free period was provided to the leasee. Hence, these charges are not to be demanded from allottee.

		the unit in question along with the fixtures therein.	
7.	Qua Property Tax:	Clause 4.1,4.5 of the MOU. Raised vide letter appended at page no.80 of reply.	The property is not registered yet. If at all these charges have to be paid before the registration of property, the allottee will pay directly to concerned authorities.
8.	Brokerage Charges:	It is submitted that the Respondent has paid a substantial amount of brokerage charges to the broker to get M/s. Reliance Projects and Property Management Services Limited on board.	Not Mentioned in MOU, due to which the present lis /complaint was instituted.
9.	Lease Registration cost	The Complainant is liable to pay proportionate share Towards lease registration cost being Rs.10,269/-.	Not Mentioned in MOU, due to which the present lis /complaint was instituted.
10.	Stamp Duty:	Clause 4.2 of the MOU.	Will be paid directly by allottee to Registration office at the time of registration of property.
11.	Applicable GST/Taxes	Clause 4.5 of the MOU.	Agreed for IFMS and Power backup Charges, if applicable.
12.	Bulk Electricity charges.	These charges are paid for the procurement of electricity from the switching station to the project, covering the cost of delivering electricity from the grid to the project location. The said demand has been raised as per letter appended at Annexure-R/6 @ page No.80	Not mentioned in MOU.

		<p>of reply.</p> <p>It is pertinent to mention that for bulk electricity the Respondent herein had entered into an arrangement with M/s. Bajghera Enterprises dated 28.11.2022 for providing bulk electricity. Copy of the Agreement dated 28.11.2022 entered into between M/s. Bajghera Enterprises and Respondent is marked and annexed herewith as Annexure-B. Copy of the CA Certificate showing the total cost per square feet for Bulk electricity is marked and annexed herewith as Annexure-C.</p>	
13	Delayed interest	<p>Since, the Complainant failed to deposit his pending dues; therefore, she is liable to pay delayed interest @ 11.10% p.a. on the same.</p>	<p>Delayed interest cannot be demanded as always the amount of pending assured returns was much higher than the reasonable dues. As per MOU, IFMS and Power backup charges are the only dues.</p> <p><i>Furthermore, the complaint is pending adjudication since 2023; thus, the respondent cannot charge anything during this period.</i></p>

Written submissions of the respondent

9. The respondent made the following further submissions on 09.04.2025: -
- (a) That the complainant has made payment of Rs. 25,04,361/- including service tax to the respondent till date. However, in addition to the above additional cost the complainant is also supposed to make other payments in the nature of EDC, IDC, Interest Free Maintenance Security (IFMS), Electricity Connection Charges, Power Back up charges, Air Conditioning Charges, service tax and such other levies/Cess/VAT as per the demands raised by the respondent in accordance with the MOU executed between the parties. Further, as per the payment plan attached as Schedule-3 to the

MOU, the complainant was liable to make a payment towards Service Tax, IFMS @ Rs.150/- per sq. ft., power backup charges, stamp duty, registration, and other charges at the time of offer of possession. The total amount paid by the complainants till date stands to be Rs. 25,04,361/-. That an amount of Rs. 6,11,406/- plus interest due and payable on the offer of possession is still pending at the end of the complainant.

(b) Justification of Charges raised by the respondent:

S.No.	Particulars	Justification
1.	Qua IFMS	Clause 4.3 of MOU
2.	Air Conditioning Charges	Clause 4.3 of MOU
3.	Power backup charges	Clause 4.3 of MOU
4.	Administrative Charges	Clause 4.2 and 4.4 of the MOU dated 15.12.2012 have been charged as per the circular dated 02.04.2018 issued by the DTP's Office.
5.	Qua Electricity Connection Charges:	These are charges for the supply of electricity within the project, covering the costs associated with establishing the connection to the electricity grid. Annexure C of the Lease Deed relied upon by the Complainant, under the sub-head Electrical, Clause 5 it was specifically agreed between the parties that the "separate energy meter with DHBVN for normal electricity will be provided by the Lessors"
6.	Qua Fit outs charges:	Clause 3.12 of the MOU. Complainant was informed about fit out charges vide letter dated 18.03.2023. Further, the Respondent had completed its scope of work as stated in Annexure C of the Lease Deed and handed over the premises to the Lessee by making it continuous and completing its scope of work. Refer Annexure-C of lease deed entered into between Reliance and Respondent @ page no. 114 of the complaint, copy whereof is also marked and annexed herewith as Annexure-A. It is relevant to mention here that as an industry and commercial practice and customs the fit-out cost is borne by the allottee as the rent is received by them and post execution of the conveyance deed with the allottee(s) he/she/they would be owners of the unit in question along with the fixtures therein.

7.	Qua Property Tax:	Clause 4.1, 4.5 of the MOU. Raised vide letter appended at page no. 80 of reply
8.	Brokerage Charges:	It is submitted that the Respondent has paid a substantial amount of brokerage charges to the broker to get M/s. Reliance Projects and Property Management Services Limited on board.
9.	Lease Registration cost	The Complainant is liable to pay proportionate share towards lease registration cost being Rs. 10,269/-.
10.	Stamp Duty:	Clause 4.2 of the MOU.
11.	Applicable GST/ Taxes	Clause 4.5 of the MOU.
12.	Bulk Electricity charges.	These are charges paid for the procurement of electricity from the switching station to the project, covering the cost of delivering electricity from the grid to the project location. # The said demand has been raised as per letter appended at Annexure-R/6 @ page no. 80 of reply. It is pertinent to mention that for bulk electricity the Respondent herein had entered into an arrangement with M/s. Bajghera Enterprises dated 28.11.2022 for providing bulk electricity. Copy of the Agreement dated 28.11.2022 entered into between M/s. Bajghera Enterprises and Respondent is marked and annexed herewith as Annexure-B. Copy of the CA Certificate showing the total cost per square feet for Bulk electricity is marked and annexed herewith as Annexure-C.
13.	Delayed Interest	Since, the Complainant failed to deposit his pending dues therefore, she is liable to pay delayed interest @ 11.10% p.a. on the same.

(c)

Jurisdiction of the authority

10. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

G. I Territorial jurisdiction

11. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the 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.

G. II Subject matter jurisdiction

12. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per flat buyer's agreement. 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.

13. 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.

Findings on the objections raised by the respondent

H. I Objection regarding non-payment of assured return due to implementation of BUDS Act.

14. The respondent/promoter raised the contention that the respondent has stopped the payment of assured return due to implementation of BUDS Act by legislature, as the BUDS Act bars the respondent for making payment of assured return and assured rental linked with sale consideration of immovable property of allottee(s). But the Authority in **CR/8001/2022** titled as **"Gaurav Kaushik and anr. Vs. Vatika Ltd."** has already held that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum,

memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon and the Act of 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per Section 2(4)(I)(iii) of the BUDS Act of 2019. Hence, the plea w.r.t. non-payment of assured return is hereby dismissed.

H.II Objection regarding delay in project due to force majeure circumstances.

15. The respondent/promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as NGT in NCR on account of the environmental conditions, restrictions on usage of ground water by High court of Punjab and Haryana, demonetization, GST, adverse effects of Covid-19 etc. and others force majeure circumstances and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. The memorandum of understanding was executed between the parties on 15.12.2012 and the due date to complete the construction comes to 15.12.2015 as per the "*Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018-SC); MANU/SC/0253/2018*" and the events taking place such as orders of NGT in NCR on account of the environmental conditions, demonetization, GST are for short duration, which does not made any impact of the construction of the developer, adverse effects of Covid-19 etc. and others force majeure circumstances which occurred after the due date of completion. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned in 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 on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrongs.

Findings on the relief sought by the complainants.

- I.I Direct the respondent to pay assured returns to the complainant.** ✓

I.II Direct the respondent to pay delayed possession charges from the due date of possession, i.e., 15.09.2015.

I.III Direct the respondent to pay interest @ 18% p.a. on amount of Rs. 25,04,361/- paid by the complainant to respondent against the sale consideration.

16. 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.
17. The factual matrix of the case reveals that the complainant applied for booking of a unit in the project "114 Avenue" and was allotted unit bearing no. H-52 on lower ground floor vide memorandum of understanding (MOU) dated 15.12.2012. However, the builder buyer agreement was not executed between the parties. The sale consideration of the unit was Rs.24,22,035/- as per the clause 1.1 of memorandum of understanding against which the complainant has paid an amount of Rs.25,04,361/-. Moreover, pursuant to clause 2.1 of memorandum of understanding, it is explicitly stated that the said unit shall only be utilized for leasing purposes subsequent to the complex's completion and the issuance of offer of possession by the developer. Occupation certificate for the said project has been obtained by the respondent from the competent authority on 17.02.2021 and offer of possession has also been made to the complainant-allottee on 05.05.2021. Furthermore, the said unit has been leased out by the respondent to "Reliance Smart" on 21.09.2022. The common issues with regard to assured return and delay possession charges are involved in the aforesaid complaint.

(I) Assured returns

18. The complainant is seeking unpaid assured returns on monthly basis as per memorandum of understanding (MOU) dated 15.12.2012 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said memorandum of understanding. Though

for some time, the amount of assured returns was paid but, later on, the respondent refused to pay the same by taking a plea that the same is not payable in view of enactment of the Banning of Unregulated Deposit Schemes Act, 2019 (hereinafter referred to as the Act of 2019). The authority has rejected the aforesaid objections raised by the respondent in **CR/8001/2022** titled as **"Gaurav Kaushik and Anr. Vs. Vatika Limited"** wherein the authority while reiterating the principle of prospective ruling, has held that the authority can take different view from the earlier one on the basis of new facts and law and the pronouncements made by the apex court of the land and it was held that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon and the Act of 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per Section 2(4)(I)(iii) of the Act of 2019. Thus, the plea advanced by the respondent is not sustainable in view of the aforesaid reasoning and case cited above.

19. The money was taken by the builder as a deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.
20. The builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement defines the builder/buyer relationship. So, it can be said that the

agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the original agreement for sale.

21. The project is already registered with the Authority vide registration bearing no. 53 of 2019 dated 24.09.2019. The amount paid by the complainant to the respondent-promoter is a regulated deposit accepted by the latter from the former against the immovable property to be transferred to the allottee later. In view of the above, the respondent is liable to pay assured return to the complainant-allottee in terms of the memorandum of understanding dated 15.12.2012.

(II) Delay possession charges.

22. In the present complaint, the complainant intend to continue with the project and is seeking delay possession charges with respect to the subject unit as provided under the provisions of Section 18(1) of the Act which reads as under:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

23. The subject unit was allotted to the complainant vide memorandum of understanding dated 15.12.2012. The due date of possession had to be calculated from the date of execution of the said MOU in view of "***Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018.***" Accordingly, the due date of possession comes out to be 15.12.2015. As per the said MOU, the respondent developer was under an obligation to further lease out the unit of the complainant post completion.
24. **Admissibility of delay possession charges at prescribed rate of interest:**
 The complainant is seeking delay possession charges. Proviso to Section 18

provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under Rule 15 of the Rules. *ibid.* 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."

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., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 14.05.2025 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(z) 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:

"(z) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is*

refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

27. On consideration of documents available on record and submissions made by the complainant and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be completed within a stipulated time i.e., by 15.12.2015.
28. However now, the proposition before it is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges?
29. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the BBA or an addendum to the BBA. The assured return in this case is payable as per "memorandum of understanding (MOU)". The rate at which assured return has been committed by the promoter is Rs.63/- per sq. ft. of the super area per month till the completion of the building which is more than reasonable in the present circumstances. If we compare this assured return with delayed possession charges payable under proviso to Section 18(1) of the Act, 2016, the assured return is much better i.e., assured return in this case is payable at Rs.24,220.35/- per month till completion of the building whereas the delayed possession charges are payable approximately Rs.23,165.33/- per month. By way of assured return, the promoter has assured the allottee that they would be entitled for this specific amount i.e., Rs.24,220.35/- till completion of construction i.e., till the receipt of occupation certificate from the competent authority (17.02.2021) and thereupon @ Rs.20,183.625/- per month. Moreover, the interest of the allottee is protected even after the completion of construction of the building as the assured returns are payable even after completion of the building. 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 their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges whichever is higher.

30. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under Section 18 and assured return is payable even after due date of possession till the date of completion of the project, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.
31. On consideration of the documents available on the record and submissions made by the parties, the complainant has sought the amount of unpaid amount of assured return as per the MOU executed between the parties. The promoter had agreed to pay to the complainant-allottees Rs.63/- per sq. ft. on monthly basis from second year of execution of MOU till completion of construction of building i.e., till the receipt of occupation certificate from the competent authority (17.02.2021) and thereupon @ Rs.52.50/- per sq. ft. on monthly basis till the said unit is put on lease. The said clause further provides that it is the obligation of the respondent promoter to lease the premises. It is matter of record that the amount of assured return was paid by the respondent promoter till December 2019 but later on, the respondent refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019. But that Act of 2019 does not create a bar for payment of assured returns even after coming into operation and the payments made in this regard are protected as per Section 2(4)(iii) of the above-mentioned Act.
32. Therefore, considering the facts of the present case, the respondent is obligated to pay the amount of assured return at the agreed rate i.e., @ Rs.63/-

per sq. ft. per month from the date the payment of assured return has not been made i.e., January 2020 till the date of completion of building i.e., on receipt of occupation certificate i.e., till 17.02.2021 and thereafter, Rs.52.50/- per sq. ft. per month till the date said unit is put on lease and rentals are achieved by the allottee. Further, the said lease rentals are payable in terms of the memorandum of understanding executed between the parties on 15.12.2012.

33. The respondent is obligated 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, from the complainant and failing which that amount would be payable with interest @ 9.10% p.a. till the date of actual realization.

I.IV Direct the respondent to handover the possession of the unit.

34. In the present complaint, the grievance of the complainant is that the physical possession has not been handed over by the respondent to the complainant. The authority observes that the respondent-promoter has obtained occupation certificate of the said project from the competent authority on 17.02.2021 and offered possession for fit-outs to the complainant on 05.05.2021.
35. In view of the above, the respondent is obligated to handover the possession of allotted unit to the complainant as per specifications of memorandum of understanding entered between the parties on 15.12.2012 as the occupation certificate for the project has already been obtained by it from the competent authority.

I.V Direct the respondent to waive off and not to charge any charges which are not part of the MOU executed between them.

36. The Authority is of the view that the respondent shall not charge anything from the complainant which is not part of the MOU executed between the

parties on 05.12.2012. Further, the Authority would deliberate upon all the charges imposed by the respondent upon the complainant-allottee as under:

Sr. No.	Description	Observation by Authority
1.	Interest Free Maintenance Security	<p>The undertaking to pay the above-mentioned charges was comprehensively set out in the memorandum of understanding executed between the parties. The said clause is reproduced hereunder: -</p> <p>Clause 4.3 of the MOU - "The Allottee shall continue to be liable to pay maintenance deposit @ Rs.150/- per sq. ft. of super area of the premises along with any other charges, cost fee as may be payable by the Allottee(s) as per the terms of Buyer's agreement and/or maintenance agreement including but not limited to power backup charges, air conditioning charges, etc."</p> <p>Therefore, the Authority is of the view that the respondent is allowed to collect a reasonable amount from the complainant on account of the maintenance charges with respect to IFMS as has already been laid down in complaint bearing no. 4031 of 2019 titled as "Varun Gupta Vs. Emaar MGF Land Limited" decided on 12.08.2021. However, the authority directs that the promoter must always keep the amount collected under this head in a separate bank account and shall maintain that account regularly in a very transparent manner. If any allottee of the project requires the promoter to give the details regarding the availability of IFMS amount and the interest accrued thereon, the promoter must provide details to the allottee. It is further clarified that out of this IFMS/IBMS, no amount can be spent by the promoter for the expenditure it is liable to incur to discharge its liability and obligations as per the provisions of Section 14 of the Act.</p>
2.	Power Back-up Charges (PBC)	<p>The undertaking to pay the above-mentioned charges was comprehensively set out in the memorandum of understanding executed between the parties. The said clause is reproduced hereunder: -</p> <p>Clause 4.3 of the MOU - "The Allottee shall continue to be liable to pay maintenance deposit @ Rs.150/- per sq. ft. of super area of the premises along with any other charges, cost fee as may be payable by the Allottee(s) as per the terms of Buyer's agreement and/or maintenance agreement including but not limited to power backup charges, air conditioning charges, etc."</p> <p>The Authority is of the view that the complainant had agreed to pay the cost of power backup charges over and above the basic sale price. Accordingly, the respondent is justified in charging the same from the complainant.</p>

3.	Electrical Connection Charges	<p>Annexure C of the lease deed specifies the "Lessor's scope of work" which mentions as under:-</p> <p><i>"Electrical</i> <i>5. Separate energy meter with DHBVN for normal electricity will be provided by the Lessors.</i></p> <p>The Authority is of the view that there is no doubt that all these charges are payable to various departments for obtaining service connections from the concerned departments including security deposit for sanction and release of such connections in the name of the allottee and are payable by the allottee. Moreover, this issue has also already been dealt with by the authority in complaint bearing no. 4031 of 2019 titled as "Varun Gupta Vs. Emaar MGF Land Limited" decided on 12.08.2021, wherein it was held that these connections are applied on behalf of the allottee and allottee has to make payment to the concerned department on actual basis. In case instead of paying individually for the unit if the builder has paid composite payment in respect of the abovesaid connections including security deposit provided to the units, then the promoters will be entitled to recover the actual charges paid to the concerned department from the allottee on pro-rata basis i.e. depending upon the area of the flat allotted to the complainant viz- à-viz the total area of the particular project. The complainant/allottee will also be entitled to get proof of all such payment to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid head.</p>
4.	Air Conditioning Charges (ACC)	<p>The undertaking to pay the above-mentioned charges was comprehensively set out in the memorandum of understanding executed between the parties. The said clause is reproduced hereunder: -</p> <p>Clause 4.3 of the MOU - <i>"The Allottee shall continue to be liable to pay maintenance deposit @ Rs.150/- per sq. ft. of super area of the premises along with any other charges, cost fee as may be payable by the Allottee(s) as per the terms of Buyer's agreement and/or maintenance agreement including but not limited to power backup charges, air conditioning charges, etc."</i></p> <p>However, Annexure C of the lease deed specifies the "Lessor's scope of work" which mentions as under:</p> <p><i>"HVAC</i> <i>1. The Lessee will do install own HVAC system inside the Leased Premises at its cost as per our specification and Drawing."</i></p> <p>The Authority is of the view that the said undertaking set out in the MOU dated 15.12.2015 was superseded by execution of lease deed between the respondent and lessee on 21.09.2022.</p>

		Therefore, the respondent is not justified in charging the same from the complainant.
5.	Administrative Charges	This issue has also already been dealt with by the authority in complaint bearing no. 4031 of 2019 titled as " Varun Gupta Vs. Emaar MGF Land Limited " decided on 12.08.2021, wherein it was held that administrative charges of upto Rs.15000/- can be charged by the promoter-developer for any such expenses which it may have incurred for facilitating the said transfer as has been fixed by the DTP office in this regard vide circular dated 02.04.2018.
6.	Fit out charges	<p>The undertaking to pay the above-mentioned charges was comprehensively set out in the memorandum of understanding executed between the parties. The said clause is reproduced hereunder: -</p> <p><i>"3.12 The Developer, at the request of the lessee, may provide the lease with the premises along with the fit outs, i.e. fittings and fixtures, the cost of which shall initially be borne by the developer without obtaining prior consent of the allottee(s) and the Allottee agrees that the same shall be fully reimbursed by it to the developer without any delay or demor. The hire charges receivable from the lessee for such fitting and fixtures shall be directly received by the Allottee."</i></p> <p>सत्यमेव जयते</p> <p>The Authority is of the view that the complainant had agreed to pay the fit-out charges to the respondent-developer. Accordingly, the respondent is justified in charging the same from the complainant.</p>
7.	Property Tax and Applicable GST/Taxes	<p>The undertaking to pay the above-mentioned charges was comprehensively set out in the memorandum of understanding executed between the parties. The said clause is reproduced hereunder: -</p> <p><i>"4.1 All taxes, whether property, statutory or municipal, rates, levies, duty, charges, etc. whether leviable now or in the future, shall be the sole responsibility of the Allottee from the date of possession, whether symbolic, actual, physical or constructive."</i></p> <p><i>"4.5 Allottee shall also be liable to pay any other Government levies/taxes/duty/cess/Service Tax etc. that may be leviable / levied by the Competent Authority with respect to Premises / Complex on proportionate basis."</i></p> <p>The Authority is of the view that the complainant had agreed to pay the property tax and GST to the respondent-developer. Accordingly, the respondent is justified in charging the same from the complainant.</p>
8.	Stamp Duty	The undertaking to pay the above-mentioned charges was comprehensively set out in the memorandum of understanding executed between the parties. The said clause

		<p>is reproduced hereunder: -</p> <p><i>"4.2 The Stamp Duty charges, legal costs and other charges related to registration, etc. of this MOU shall be exclusively borne by the Allottee."</i></p> <p>The Authority is of the view that though stamp duty charges are payable by the complainant-allottee, however, the said charges are payable at the time of execution of conveyance deed by the respondent promoter in favour of the complainant-allottee as per norms of the State government. Therefore, the respondent is obligated to charge stamp duty from the complainant only at the time of execution of conveyance deed.</p>
9.	Brokerage Charges	<p>The Authority observes that all these charges were not agreed to be paid by the complainant-allottee as per the Memorandum of Understanding executed between the parties on 15.12.2012. Accordingly, the respondent is not justified in charging the same from the complainant.</p>
10.	Lease registration charges	<p>The Authority is of the considered view that the lease deed dated 21.09.2022 was executed exclusively between the respondent and Reliance Projects and Property Management Services Limited. The complainant is neither a signatory nor a party to the said lease deed. Furthermore, there exists no separate agreement between the complainant and the respondent that imposes any obligation on the complainant to bear the lease registration charges. In the absence of such a contractual arrangement, the respondent is not justified in recovering the said charges from the complainant.</p>
13.	Bulk Electricity charges	<p>The term "bulk electricity charges" denotes the expenditure incurred by the promoter for obtaining a single-point electricity connection for a group housing or commercial project. This electricity supply is subsequently distributed to individual units or allottees within the said development.</p> <p>The Authority is of the view that the promoter bears the primary obligation to make payment of such charges to the electricity distribution company, herein Dakshin Haryana Bijli Vitran Nigam (DHBVN), in respect of the bulk connection. While the promoter is entitled to recover these charges from the allottees, such recovery must strictly conform to the regulations framed by the Haryana Electricity Regulatory Commission (HERC) and must be duly incorporated in the agreement executed between the parties. In the absence of such express stipulation, unilateral imposition of these charges upon the complainant-allottee would be untenable.</p> <p>Therefore, in peculiar facts and circumstances of this case, these charges were not agreed to be paid by the complainant-</p>

	allottee as per the Memorandum of Understanding executed between the parties on 15.12.2012. the respondent is not justified in recovering the said charges from the complainant.
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I.VI Direct the respondent to pay litigation charges amounting to Rs.55,000/-

37. The complainant is seeking above mentioned relief w.r.t. compensation and litigation expenses. 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 and legal expenses.

Directions of the authority

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

- I. The respondent is directed to pay the amount of assured return at the agreed rate i.e., @ Rs.63/- per sq. ft. per month from the date the payment of assured return has not been made i.e., January 2020 till the date of completion of building i.e., on receipt of occupation certificate i.e., till 17.02.2021 and thereafter, Rs.52.50/- per sq. ft. per month till the date said unit is put on lease and rentals are achieved by the allottee. Further, the said lease rentals are payable in terms of the memorandum of understanding executed between the parties on 15.12.2012.
- 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, from the complainant and failing which that amount would be payable with interest @ 9.10% p.a. till the date of actual realization.

- III. The respondent is obligated to handover the possession of allotted unit to the complainant as per specifications of memorandum of understanding entered between the parties on 15.12.2012.
- IV. The respondent shall not charge anything from the complainant which is not part of the MOU executed between the parties on 05.12.2012 and in terms of para 36 of this order.
39. Complaint stands disposed of.
40. File be consigned to registry.

Dated: 14.05.2025



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

HARERA
GURUGRAM