

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

Complaint no.: 891 of 2024
Date of filing of complaint: 29.03.2024
Date of order: 30.05.2025

Krishan Kumar
R/o: - House No. 826, Sector-31, Gurgaon-122001

Complainant

Versus

1. Mascot Buildcon Private Limited.
Regd. office at: 294/1, Vishwakarma Colony,
Opposite ICD MB Road, Lalkuan, New Delhi-110044
2. V Square Development Company
Corporate office at: F 122-124, First Floor, JMD
Megapolis, Sector-48, Sohna Road, Gurgaon-122018
3. Home Town Property Pvt. Ltd.
Regd. office at: 294/1, Vishwakarma Colony,
Opposite ICD MB Road, Lalkuan, New Delhi-110044

Respondents

CORAM:
Shri Vijay Kumar Goyal

Member

APPEARANCE:
Ms. Shobha Mishra(Advocate)
Sh. Gulshan Sharma (Advocate)
None

Complainant
Respondent no. 1 & 3
Respondent no. 2

HARERA
GURUGRAM
ORDER

1. This complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made

thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. No.	Particulars	Details
1.	Project name and location	"Oodles Skywalk", Sector-83, Gurugram
2.	Project area	3.0326 acres
3.	Nature of the project	Commercial
4.	DTCP license no. and validity status	08 of 2013 dated 05.03.2013 valid up to 04.03.2017
5.	Name of the licensee	Dharam Singh
6.	RERA Registered/not registered	294 of 2017 dated 13.10.2017 valid up to 31.12.2019
7.	Unit no.	G-87 & Ground Floor (As per page no. 59 of the complaint)
8.	Unit area	509.14 sq. ft. (As per page no. 59 of the complaint)
9.	Memorandum of understanding	of 18.09.2013 (As per page no. 59 of the complaint)
10.	Start of construction	1.03.2014 as per CR no. 2311 of 2021 30.03.2014 as per CR no. 843 of 2022
11.	Date of allotment	15.01.2016 (As per page no. 53 of the complaint)
12.	Date of space buyer's agreement	04.04.2016 (As per page no. 57 of the complaint)
13.	Basic Sale consideration	Rs.56,15,814/- (As per page no. 53 of the complaint)
14.	Total sale consideration	Rs.59,56,938/- (including EDC/IDC) (As per page no. 60 of the complaint)
15.	Total amount paid by the complainants	Rs.54,08,046/- (As per clause 1.3 of MOU dated 18.09.2013 on page no. 42 of the complaint)

16.	Possession Clause	38. The "Company" will based on its present plans and estimates, contemplates to offer possession of said unit to the Allottee(s) within 36 months of signing of this Agreement or within 36 months from the date of start of construction of the said building, whichever is later with a grace period of 3 months, subject to force majeure events or governmental action/inaction. If the completion of....." (As per page no. 68 of the complaint)
17.	Assured Return clause	3. Assured Return 3.1 Till the notice for offer of possession is issued, the Developer, shall pay to the allottee an Assured Return at the rate of Rs.122.36/- (Rupees One Hundred Twenty Two and Paise Thirty Six 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 10th day of every English Calender month on due basis. (As per page no. 44 of the complaint)
18.	Due date of delivery of possession	04.07.2019 (Note: Due date is calculated 36 months from the date signing of the agreement i.e., 04.04.2016 plus grace period 3 months)
19.	Occupation certificate	26.10.2023 (As per reply dated 22.08.2024 filed by the respondent)
20.	Demand letter for offer of possession	08.11.2023 (As per reply dated 22.08.2024 filed by the respondent)
21.	Reminder letter	18.12.2023 (As per reply dated 22.08.2024 filed by the respondent)
22.	Cancellation notice of G-87	11.01.2024 (As per page no. 84 of the complaint)

23.	Email regarding restoration of the unit	02.09.2024 (As per page no. 85 of the complaint)
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B. Facts of the complaint:

3. The complainants have made the following submissions:
- i. That the complainant was approached by the respondent in relation of booking of commercial/retail unit in the commercial project Oodles Skywalk situated at Sector 83, Revenue Estate of village Sihi, Tehsil Manesar, District Gurgaon, Haryana with the total sale consideration of Rs.59,56,938/-.
 - ii. That the MOU was signed between the complainant and the respondent and as per the Article-1(1.1) of the said MOU the said commercial unit G-81, Ground Floor, admeasuring 509.14 sq. ft. (Super Area), in the project "Oodles Skywalk", Sector-83, Gurgaon, Haryana was allotted to the complainant.
 - iii. That out of total sale consideration of Rs.59,56,935/- payable under clause 1.1 of the MOU, Rs.54,08,046/- was paid by the complainant to the respondents towards the booking amount, registration and for obtaining allotment of the said commercial unit.
 - iv. That the complainant also paid Rs.10,00,000/- in cash towards the booking of the said unit but did not get any receipt of payment from the respondent.
 - v. That the complainant had paid almost 91% of the total sale consideration as per the payment plan under plan -B i.e., Down payment plan of the space buyer's agreement.
 - vi. That on 04.04.2016, the space buyer's agreement was executed between the respondent through its authorized representative and the complainant.

- vii. That as per the Article-3 (3.1) of the above said MOU dated 18.09.2013 the respondent convinced the complainant to make the full payment and with the assurance that the developer shall pay to the allottee an assured return at the rate of Rs.122.36/- per sq. ft. of Super area premises per month till the offer of possession.
- viii. Through a letter dated 24.05.2017 the respondent asked to forgo an amount of Rs.1,12,136/- towards the "Assured Return" at the instance of force majeure on account of demonetization policy of the Government of India.
- ix. That the respondent had paid Rs.2,24,272/- through 4 cheques each amounting to Rs.56,068/- within an interval of 2 months from 15.07.2017 till 15.01.2018.
- x. That as per clause 38 of the space buyer's agreement, the respondent contemplates the offer of possession within 36 months of this agreement or within 36 months of the starting of the construction whichever is later with a grace period of 3 months. But the respondent failed to offer the possession of the said unit within the stipulated time and has defaulted in handing over the project on time.
- xi. That to the utter surprise of the complainant on 11.01.2024, the respondent sent a cancellation letter of the unit no. G-87, without sending any demand letter for offer of possession and reminder to the complainant. At the time of booking and signing of the said MOU, the respondent committed to give the possession in 36 months with the grace period of 3 months but it took the respondent almost 31 months to sign the space buyer's agreement. As per the said agreement offer of possession should have been given in the month of July 2017. After 75 months instead of getting offer of possession

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- the complainant got the cancellation letter which is illegal and unwarranted act of the respondent.
- xii. That the complainant replied the above cancellation letter dated 29.01.2024 and 08.02.2024 seeking clarification on reason behind cancellation of the said unit G-87 wherein he had paid almost 91 percent of the money at the time of booking convinced by the respondent's Assured Return Policy.
 - xiii. That despite several phone calls, office visits and WhatsApp messages respondent did not reply regarding any offer of possession of the said commercial unit to the complainant instead respondent sent the above cancellation letter to harass the complainant.
 - xiv. That the intention of the respondent and their officers and directors was malafide right from the beginning and has been aimed to cheat the complainant. The respondent has committed breach of trust and cheated the complainant.
 - xv. That the respondent has mis-appropriated the said amount paid by the complainant and therefore, are liable to be prosecuted under the provisions of law.
 - xvi. That accordingly, the complainant is left with no other option except to approach the Hon'ble Court with the present complaint. Hence, this complaint.
 - xvii. That the complaint filed by the complainant here in is within the limitation period and complainant has paid the fee as required under law.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- i. Direct the respondents i.e., M/s Mascot Buildcon Pvt. Ltd. and others to pay delayed possession interest and hand over possession of the unit.
 - ii. Direct the respondent to pay the assured return amount of Rs.1,12,136/- along with the interest @12% per annum till the offer of possession as per the Memorandum of Understanding.
 - iii. Direct the respondent to pay the delayed possession charges along with the prescribed rate of interest from the date of amount deposited by the complainant to the account of the respondents.
 - iv. Direct the respondent to pay the compensation of Rs.5,00,000/- to the complainant for mental agony, harassment and losses as per the Act of 2016.
 - v. Direct the respondent to pay litigation cost to the complainant.
5. The authority issued a notice dated 04.07.2024 of the complaint to the respondents by speed post and also on the given email address at hcagency@vsnl.com, oodlesskywal@gmail.com, and shobha_datta@hotmail.com for filing reply within 4 weeks from the date of issuance of notice. The delivery reports have been placed on the file. The counsel for the respondent no. 2 neither put in appearance nor filed reply to the complaint within the stipulated period despite given ample opportunities. Though on 22.08.2024, the counsel for the respondent no.1 & 3 requested for deletion of name of respondent no. 2 from the list of respondents, but no application has been filed regarding the same till date. Therefore, the Authority is hereby left with no option but to struck off the defence of respondent no. 2.

D. Reply by the respondent no. 1 & 3:

6. The respondents have contested the complaint on the following grounds:

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- I. That the complainant on the strength of MoU dated 18.09.2013, initially executed between the parties was regularly receiving the "assured return" and, admittedly, thereafter, after execution of space buyer's agreement on 04.04.2016 between the parties, the payment of said "assured return" was stopped. Now, through the "prayers" sought for in the present complaint, he is claiming the "assured return", which due to following reasons and submissions including the latest dictum laid down by this Hon'ble Authority, is not permissible in the eyes of law and accordingly, the said prayer is to be rejected by this Hon'ble Authority.
- II. That SBA was admittedly executed on 04.04.2016 between the parties, after fulfilling all the formalities and procedures. The complainant admitted/executed the said SBA with the respondent. So far as claim of "assured return", after execution of SBA, is concerned, it is respectfully submitted that after execution of space buyer's agreement, the "assured return" payable to the complainant under MOU stands extinguished, which is clear from the language of the terms and conditions contained in the SBA. For ready perusal of the Hon'ble Authority, the clauses 79 and 83 of the agreement are extracted as under:

"79. It is specifically understood by the Allottee (s) that upon execution, the terms and conditions as set out in the Agreement shall supersede the terms and conditions as set out in the application and/or any other document, mail or correspondence in this regard.

83. That this **Agreement** which has been titled as "**Space Buyer's Agreement**" constitutes the entire Agreement between the parties and revokes and supersedes all previous discussions/correspondence, application and Agreement between the parties, if any, concerning the matters covered herein whether written, oral or implied. This Agreement shall not be changed or modified except by written amendments duly agreed by the parties. The terms and conditions and various provisions embodied in this Agreement shall be incorporated in the sale deed and shall form part thereof."



- Thus, in view of aforesaid, it cannot be said that complainant is liable for any assured return after execution of SBA, whereby all previous discussions / correspondence, application and agreement between the parties stands revoked and superseded. Rather, it is relevant to state here that under the MOU, the total AR paid was Rs.25,08,533/- to the complainant and by default of the Department of Accounts, an excess amount of Rs.13,70,556/- was paid to the complainant after execution of SBA, which amount would be duly deducted at the time of refunding the amount to him.
- III. That on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) were regulated. The Hon'ble Supreme Court directed framing of Modern Mineral Concession Rules. 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 development of the said project became scarce in the NCR as well as areas around it. Further, developer was faced with certain to non-availability of raw material due to various stay orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby stopping/regulating the mining activities by the judicial authorities in NCR on account of the environment conditions, restrictions on usage of water, etc. That in addition to above all the projects in Delhi NCR region are also affected by the blanket stay on construction every year during winters on account of AIR pollution which leads to further delay the projects.
- IV. That the respondent submitted that despite exercising diligence and continuous pursuance of project to be completed, project of

answering respondent is completed and the occupation certificate thus, in totality, the project in question is "completed" in its true letter and spirit. However, due to prevailing of certain "Force Majeure" situation existed viz., Covid-19 pandemic in the entire country led to lockdown for quite certain long period of time twice in two years, there existed various difficulty faced by the respondent builder, in timely completion of the project. However, the respondent, despite defaults of several allottees, earnestly fulfilled its obligations under the agreement and completed the project as expeditiously as possible and received the occupation certificate on 26.10.2023.

- V. That the delay attributed in completion of the project is also because of the fact that allottee is a defaulter, who willfully and intentionally defaulted in making timely payments / installments as per the space buyer's agreement executed between the parties. The allottee herein also violated various terms of the agreement and defaulted in making timely payments, which accounted to shortage of money for the project, which in turn also delayed the project. It is respectfully submitted that present is one of such cases, wherein the present allottee also became "defaulter" in making the timely payment, which further led to creating hindrance in smooth functioning of the construction work in the project. The project such as the one in question is a huge project and involves putting in place huge infrastructure and is dependent on timely payment by all the allottees. Such huge projects do take some reasonable time for completion and timelines are not absolute. Moreover, the complainant persistently defaulted in timely remittance of the installments to the respondent. The respondent was constrained to

issue various demand letters, notices, reminders etc. to the complainant-allottee requesting him to remit his outstanding dues, which he miserably failed to pay and ignored all the demand letters, notices and reminders, which led to finally cancellation booked unit on 11.01.2024. Therefore, there is no equity in favour of the complainant, when the tentative unit has already been cancelled as he has lost the title of "allottee" after cancellation.

7. The complainant has filed the present complaint against R1, R2 and R3 in which R1 is the developer/promoter and R3 is the original developer who has applied for license in collaboration with the land owner and R2 is the agency. The original developer i.e., R3 which later on entered into a collaboration agreement with R1 vide which it has transferred all the rights to R1 to construct and develop the project. Thus, all the respondents are jointly and severally liable to the complainant being the developers and the agency.
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 on the basis of these undisputed documents and submissions made by the complainant.

E. Jurisdiction of the Authority:

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

E.I Territorial Jurisdiction

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

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objections raised by the respondents:

F.I Objection regarding the circumstances being 'force majeure':

11. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as 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 and the promoter is required to take the same into consideration while launching the project. 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 complainant:

G.I Direct the respondent to pay the assured return amount of Rs.1,12,136/- along with the interest @12% per annum till the offer of possession as per the Memorandum of Understanding.

12. The complainants are seeking assured returns on monthly basis as per the MOU dated 18.09.2013 at the rates mentioned therein. It is pleaded by the complainant that the respondent has not complied with the terms and conditions of the said MoU. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same. 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.
13. A buyer's agreement was executed between the complainant and the respondent on 04.04.2016 by which a specific unit bearing no. G-87 has been allotted to the complainant for sale consideration of Rs.59,56,938/- which includes EDC/IDC. As per clause 38 of the buyer's agreement, the due date for handing over of possession is 36 months from the date of agreement or from the date of start of construction, whichever is later with grace period of 3 months. Thus, the due date for

possession comes to 04.04.2019 which includes the grace period of 3 months. Vide clause 3.1 of the MOU dated 18.09.2013, the respondent has promised an amount of Rs.122.36/- per sq. ft. of super area per month in the form of assured return till the offer of possession. The definition of "allottee" as per section 2(d) of the Act of 2016 provides that an allottee includes a person to whom a plot, apartment or building has been allotted, sold or otherwise transferred by the promoter. Section 2(d) of the Act of 2016 has been reproduced for ready reference:

2(d)

"allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

Keeping in view the above-mentioned facts and the definition of allottee as per Act of 2016, it can be said that the complainant is allottee.

14. The money was taken by the promoter as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the promoter promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.
15. The promoter is liable to pay that amount as agreed upon. Moreover, an agreement/MoU defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the said agreement.

16. In the present complaint, the assured return was payable as per clause 3 of MOU dated 18.09.2013, which is reproduced below for the ready reference:

3. Assured Return

3.1 Till the notice for offer of possession is issued, the Developer, shall pay to the allottee an Assured Return at the rate of Rs.122.36/- (Rupees One Hundred Twenty Two and Paise Thirty Six 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 10th day of every English Calender month on due basis.

17. Thus, the assured return was payable @ Rs.122.36/- per sq. ft. of super area per month i.e., Rs.62,298/- per month w.e.f. 18.09.2013, till the possession of the said unit is handed over to the complainant.
18. The respondent in its reply dated 22.08.2024 took a plea that the complainant is not entitled to the benefit of assure returns as the space buyer's agreement dated 04.04.2016 superseded the Memorandum of understanding dated 18.09.2013. However, as per clause 83 of the space buyer's agreement states that "this agreement constitutes the entire agreement between the parties and revokes and supersedes all previous discussions/correspondence, application and Agreement between the parties, if any, concerning the matters covered herein whether written, oral or implied. This Agreement shall not be changed or modified except by written amendments duly agreed by the parties. The terms and conditions and various provisions embodied in this Agreement shall be incorporated in the sale deed and shall form part thereof". And there is no clause in buyer's agreement which talks about the assured returns. Moreover, the respondent was paying the assured returns even after the execution of buyer's agreement in terms of the MOU dated 18.09.2013. Also, on 24.05.2017, the respondent sent a letter to the complainant stating that due to financial hardship on account of demonetization, the respondent is unable to pay assured returns to the complainant as

agreed in terms of MOU and assured the respondent company will take all necessary steps towards giving benefits of future assured returns at the time of "offer of possession".

19. In light of the reasons mentioned above, the authority is of the view that as per MOU dated 18.09.2013, it was obligation on the part of the respondent to pay the assured return. It is necessary to mention here that the respondent has failed to fulfil its obligation as agreed inter se both the parties in MOU dated 18.09.2013. Accordingly, in the interest of natural justice, the liability of the respondent to pay assured return as per buyer's agreement is still continuing. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return in terms of clause 3 of MOU dated 18.09.2013 at the agreed rate i.e., @ Rs.62,298/-per month from the date of execution of MOU i.e., 18.09.2013 till offer of possession i.e., 08.11.2023.

G.II Direct the respondents i.e., M/s Mascot Buildcon Pvt. Ltd. and others to pay delayed possession interest and hand over possession of the unit.

G.III Direct the respondent to pay the delayed possession charges along with the prescribed rate of interest from the date of amount deposited by the complainant to the account of the respondents.

20. The above sought relief(s) by the complainant are taken together being inter-connected.

21. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the 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. 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]

(1) 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.

22. 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.
23. 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., 30.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
24. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

- (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;"*

25. The authority further observes that now, the proposition before the Authority whether an allottee who is getting/entitled for assured return

even after expiry of the due date of possession, is entitled to both the assured return as well as delayed possession charges?

26. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottee on account of a provision in a MoU or in the BBA or an addendum to the MoU/BBA or allotment letter. The assured return in this case is payable from the date i.e., 18.09.2013 till possession is handed over to the complainant-allottee. If we compare the assured return i.e., Rs.62,298/- per month with delayed possession charges i.e., Rs.50,024/- 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 allottee that he will be entitled for this specific amount till handing over of possession. Accordingly, the interest of the allottee is 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 charges 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 allottee as his money is continued to be used by the promoter even after the promised due date and in return, he is paid either the assured return or delayed possession charges, whichever is higher.
27. 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 handing over of possession of the said unit. The allottee shall be entitled to assured return or delayed possession charges, 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 is made to the complainant. The project is considered habitable or fit for occupation only after the grant of occupation certificate by the competent authority.
28. The complainant in its written submissions dated 22.01.2025 submitted that as per buyer's agreement dated 04.04.2016, the unit of the complainant was supposed to be handed over on or before 04.07.2019 i.e., 36 months from the date of execution of this agreement plus grace period of 3 months. However, the occupation certificate of the unit was obtained by the respondent on 26.10.2023 and offer of possession was made on 08.11.2023 after a delay of more than 4 years. Moreover, after issuance of a reminder letter dated 18.12.2023, the allotment of the unit was cancelled on 11.01.2024 on account of non-payment despite paying Rs.54,08,046/- against the sale consideration of Rs.59,56,938/- i.e., almost 91% of the sale consideration. Now, the question arises before the Authority is that whether the cancellation of the unit of the complainant is valid or not?
29. The respondent has cancelled the unit vide cancellation letter dated 11.01.2024 after obtaining occupation certificate from the competent Authority on 26.10.2023 and offer of possession on 08.11.2023 on account of outstanding dues after issuing reminder dated 18.12.2023. The complainant has paid considerable amount of Rs.54,08,046/- i.e., almost 91% of the total sale consideration of Rs.59,56,938/- way back in 2013 and the due date of possession was lapsed in 2019. There is substantial delay of 4 years in offer of possession as the due date of possession has lapsed on 04.07.2019 only and if the delay possession charges or assured return to be paid by the respondent are considered it is the respondent who has to pay even after considering the outstanding dues demands raised by the respondent on offer of possession. On consideration of all the

submissions made by the parties and documents place on record, the cancellation of the unit stands invalid.

30. Hence, the authority directs the respondent/promoter to pay assured return to the complainant at the rate of Rs.62,298/- per month from the date of execution of MOU i.e., 18.09.2013 till offer of possession i.e., 08.11.2023.

G.IV Direct the respondents to pay the compensation of Rs.5,00,000/- to the complainant for mental agony, harassment and losses as per the Act of 2016.

31. The above sought relief(s) by the complainant are taken together being inter-connected.


32. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

H. Directions of the authority:

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

- i. Cancellation dated 11.01.2024 is bad in eyes of law and hence set-aside and the respondents are directed to reinstate the unit of the complainant within 30 days of this order.
 - ii. The respondents are directed to pay the assured return at the rate i.e., Rs.62,298/- per month as per agreed terms of MOU dated 18.09.2013 per month from the date of execution of MOU i.e., 18.09.2013 till offer of possession i.e., 08.11.2023.
 - iii. The respondents are directed to pay arrears of accrued assured return as per MOU dated 18.09.2013 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.
 - iv. The complainant is directed to pay outstanding dues, if any remains after adjustment of payable assured returns and thereafter the respondents shall handover the possession of the allotted unit to the complainant.
34. Complaint stands disposed of.
35. File be consigned to registry.

Dated: 30.05.2025


(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram