

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

Complaint no.: 991 of 2024
Date of filing of complaint: 29.03.2024
Date of order: 30.05.2025

Bhim Singh

Complainant

R/o: - C-9, Nishant Park, Kakraula, New Delhi-110078

Versus

1. Mascot Buildcon Private Limited.

Regd. office at: 294/1, Vishwakarma Colony,
Opposite ICD MB Road, Lalkuan, New Delhi-110044

2. 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:

Sh. Animesh Goyal (Advocate)

Sh. Gulshan Sharma (Advocate)

Complainant

Respondent no. 1 & 2

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.	F-137 & First Floor (As per page no. 69 of the complaint)
8.	Unit area	341.22 sq. ft. (As per page no. 69 of the complaint)
9.	Memorandum understanding of	18.06.2013 (As per page no. 26 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	18.01.2016 (As per page no. 39 of the complaint)
12.	Date of space buyer's agreement	25.04.2016 (As per page no. 67 of the complaint)
13.	Total sale consideration	Rs.19,79,076/- (As per page no. 70 of the complaint)
14.	Total amount paid by the complainants	Rs.20,52,460/- (As per clause 1.3 of MOU dated 18.09.2013 on page no. 31 of the complaint)
15.	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

		<p><i>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....."</i></p> <p>(As per page no. 78 of the complaint)</p>
16.	Assured Return Clause	<p>3. Assured Return</p> <p>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.96.70/- (Rupees Ninety Six Rupees and Paise Seventy 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 Calender month on due basis.</p> <p>(As per page no. 33 of the complaint)</p>
17.	Due date of delivery of possession	<p>25.07.2019</p> <p>(Note: Due date is calculated 36 months from the date signing of the agreement i.e., 25.04.2016 plus grace period 3 months)</p>
18.	Occupation certificate	<p>26.10.2023</p> <p>(As per reply dated 22.08.2024 filed by the respondent)</p>
19.	Demand letter for offer of possession	<p>08.11.2023</p> <p>(As per reply dated 22.08.2024 filed by the respondent)</p>
20.	Reminder letter	<p>18.12.2023</p> <p>(As per reply dated 22.08.2024 filed by the respondent)</p>
21.	Cancellation notice of F-137	<p>18.01.2024</p> <p>(As per page no. 101 of the complaint)</p>
22.	Legal notice for re-allotment of unit F-137	<p>14.02.2024</p> <p>(As per page no. 102 of the complaint)</p>

B. Facts of the complaint:

3. The complainants have made the following submissions:

- i. That in the year 2013, the respondents advertised its proposed project called 'Oodles Skywalk' in Sector-83, Gurugram, Haryana, wherein the respondents specifically stated that the project is very lavish and the allottee will get the higher assured return as compared from the other projects in the vicinity.
- ii. That from the aforesaid advertisements of the respondents, many people were induced by the respondents to part with their hard-earned money for booking the promised commercial space. In a similar fashion, the complainant was induced by the real estate agent of the respondent as well.
- iii. That induced by the real estate agent of the respondent no.1, the complainant filed the application form dated 22.04.2013 and the respondent duly received the aforesaid application of the complainant. After that the respondent no. 1 executed the Memorandum of Understanding with the complainant dated 18.06.2013 and respondent allotted the unit in first floor of the said project having area of 341.22 sq. ft. and total sale consideration of the commercial unit was Rs.19,79,076/-.
- iv. That after submitting the application form the complainant has paid an amount of Rs.6,73,000/- in favour of respondent no.1 through cheque. The cheque was duly encashed in the account of respondent no.1.
- v. That before the signing of the MOU the complainant paid further an amount of Rs.14,15,860/- vide two cheques in favour of respondent no. 1 and that the cheques were duly encashed in the account of the respondent no.1. In total, the complainant has paid an amount of



Rs.20,88,260/- to the respondent no.1 at the time of execution of MOU dated 18.06.2013.

- vi. That the respondent no.1 further assured the complainant that till the notice for offer of possession is issued by the respondent, the respondent no. 1 shall pay the complainant an Assured Return at the rate of Rs.96.70/- per sq. ft. of super area per month.
- vii. That after entering the MOU, the respondent has been giving an amount of Rs.32,975/- per month as per MOU signed between the parties.
- viii. That on 18.01.2016, the complainant received the allotment letter in which specified unit number was allotted to the complainant i.e., F-137, first floor in 'Oodles Skywalk' situated in Sector-83, Gurugram and the respondent no. 1 confirmed that the complainant has deposited the amount of Rs.20,52,460/-.
- ix. That after some time respondent no.1 called the complainant for execution of space buyer's agreement dated 25.04.2016 stating that it is required for confirmation of allotment of the unit number, but the complainant objected to sign the said space buyer's agreement on the ground that there was no clause of assured return in the said space buyer's agreement. After considering the objection, the respondent no.1 assured that though it is not written in the space buyers' agreement, but the respondent no. 1 will be giving the cheques for assured return payment monthly on time. After giving the assurances, the complainant signed the space buyer's agreement with the respondent no.1.
- x. That after the execution of space buyers agreement, the complainant received the assured monthly payment till October 2016 as promised by the respondent no.1, but after that the respondent no. 1

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did not give the assured return amount monthly, but had given cheques in July 2017, September 2017, November 2017, January 2018, March 2018 and May 2018 and assured that the balance amount of assured return amount will be disbursed soon in the account of the complainant.

- xi. That after this, the respondent no.1 stopped making further payment of the assured return monthly illegally and unauthorizedly without providing any explanation to the complainant. After that the complainant visited the office of the respondent no.1 asking for assured return monthly payment but the officials of the respondent no.1 made lame excuses and avoided payment to the complainant.
- xii. That the respondent no.1 is liable to make the assured return payment monthly till the offer of possession to the complainant according to the MOU dated 18.06.2013. They neither made the payment nor offered the possession of the unit within the stipulated time as agreed in the space buyer's agreement dated 25.04.2016.
- xiii. That the respondent no.2 sent a letter titled 'demand letter for offer of possession' dated 08.11.2023 to the complainant demanding more amount under various heads of electricity charges, air conditions charges, power back up and interest and not making any offer of possession. After receiving the letter dated 08.11.2023, the complainant visited the office of the respondent no.1 asking that when I booked the unit with respondent no.1 and made complete payment to the respondent no.1 why the said letter generates from the respondent no.2. The officials of the respondents stated that these two companies are sister concern companies so you need not worry about the receiving of the said letter from the respondent no.2 and that the respondent no.2 is also the original developer who has

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assigned the rights to complete the project to the respondent no.1 and due to some internal changes, the demand letter was sent by the respondent no.2 on behalf of the respondent no.1. The officials of the respondents also stated that the demanded amount will be disbursed in the name of respondent no.2 and it will go in the account of your unit booked with the respondent no.1. The complainant further asked the officials of the respondent why the interest is charged upon him now when he had already made the complete payment at the time of entering the MOU with the respondent no.1. To this the officials of the respondents did not give any satisfactory reply to the complainant. The complainant made it clear to the respondents that he will make the payment of the aforesaid amount only after getting the satisfactory explanation of the same. The officials of the respondents assured the complainant that they will call him regarding the clarification of the interest amount.

- xiv. That the complainant was completely shocked when he received the letter dated 18.12.2023 regarding the overdue payment and in that letter, a further amount of interest is also levied by the respondents. After receiving the said letter, the complainant again visited the office of the respondents stating that he is waiting for their call of clarification regarding the aforesaid letter dated 08.11.2023, but instead he got another letter dated 18.12.2023 asking for overdue payment which is illegal and unauthorized. The respondents stated that if the complainant does not make this payment, the unit reserved for the complainant will be cancelled and the amount deposited with the respondents will be forfeited. After this the complainant gave the cheque of Rs.3,73,133/- deducting the interest

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amount in favour of respondent no.2 and respondent to.2 also gives receiving on the photocopy of the cheque. After receiving the cheque, the officials of the respondents assured the complainant that they will call the complainant for starting the process of registration of the conveyance in favour of the complainant.

- xv. That to the dismay of the complainant, respondent no.2 issued a cancellation letter dated 18.01.2024 even after depositing the demanded amount by the respondents on time.
- xvi. That thereafter the complainant tried to contact with the officials of the respondents and requesting them to treat the alleged cancellation as illegal, null and void and to treat the complainant as allottee of the aforesaid unit. However, none of them ever paid any heed to the just and genuine request of the complainant and the complainant is left with no other remedy except approaching this Hon'ble Authority.
- xvii. That the Act and conduct of the respondents in deliberately inducing the complainant to part away with his life savings and cheating him upon false documents amounts to an act of fraud and cheating for which the present complaint is being filed.
- xviii. That it is submitted that the modus operandi of the respondents and their officials have caused tremendous financial pressure upon the complainant herein for which the complainant is entitled to be reimbursed forthwith as well as for the mental agony caused to the complainant by the acts, omissions and mala fide conduct on the part of the respondent.
- xix. That the Act of receiving the hard-earned money from the complainant and thereafter cancelling the unit in a fraudulent manner despite deposit of the entire money by the complainant as

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per the demand of the respondents amounts to an act of fraud and deliberate delay for which respondents are liable to pay damages as well.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- i. Direct the respondent to set-aside the cancellation letter dated 18.01.2024 and handover the possession of the unit of the complainant followed by execution and registration of the conveyance deed in terms of space buyer's agreement dated 25.04.2013 and MOU dated 18.04.2013.
 - ii. Direct the respondent to assured return monthly to the complainant from the date when the respondent stopped giving the assured return monthly to the complainant till offer of possession in terms of MOU dated 18.04.2013.
 - iii. Restrain the respondent from further allotting the unit of the complainant or transferring the possession of the same to any third person.

D. Reply by the respondents:

5. The respondents have contested the complaint on the following grounds:
- I. That the complainant on the strength of MoU dated 18.06.2013, initially executed between the parties was regularly receiving the "assured return" and, admittedly, thereafter, after execution of space buyer's agreement on 25.04.2016 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 25.04.2016 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.15,02,418/- to the complainant and by default of the Department of Accounts, an excess amount of Rs.11,87,856/- 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

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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.

6. The complainant has filed the present complaint against R1 and R2 in which R1 is the developer/promoter and R2 is the original developer

who has applied for license in collaboration with the land owner. The original developer i.e., R2 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.

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 on the basis of these undisputed documents and submissions made by the complainant.

E. Jurisdiction of the Authority:

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

E.I Territorial Jurisdiction

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.

9. 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':

10. 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 set-aside the cancellation letter dated 18.01.2024 and handover the possession of the unit of the complainant followed by execution and registration of the conveyance deed in terms of space buyer's agreement dated 25.04.2013 and MOU dated 18.04.2013.

11. The complainant was allotted a unit in the project of respondent "Oodles Skywalk", in Sector 83, Gurugram vide allotment letter dated 18.01.2016 for a total sum of Rs.19,79,076/-. The space buyer's agreement was executed between the parties on 25.04.2016 and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.20,52,460/-. As per clause 38 of the buyer's agreement dated 25.04.2016, the possession of the unit was to be delivered on or before 25.07.2019 but the respondents failed to fulfil their commitments. Moreover, the allotment of the unit was cancelled on 18.01.2024 despite paying more than 100% sale consideration.
12. The counsel for the respondent vide proceedings of the day dated 24.04.2025 draws attention of the Authority to the fact that the occupation certificate of the project was received on 26.10.2023 and offer of possession was made to the complainant on 08.11.2023. And as per possession letter dated 08.11.2023, an outstanding amount of Rs.3,75,825/- was to be paid by the complainant on offer of possession in the name of air conditions charges, electricity charges/meter charges and power backup charges etc. He further stated that the respondent issued a reminder to the complainant on 18.12.2023, but the complainant never came forward to take the possession and payment of outstanding dues. Further, on 18.01.2024 the respondent cancelled the unit of the complainant on account of non-payment. Thereafter, the complainant sent a legal notice to the respondent for re-allotment of the unit on 14.02.2024 but no heed was paid to the same by the respondent.

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Now, the question arises before the Authority is that whether the cancellation of the unit of the complainant is valid or not?

13. The respondent has cancelled the unit vide cancellation letter dated 18.01.2024 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 reminder dated 18.12.2023. The complainant has paid an amount of Rs.20,52,460/- i.e., more than 100% of the total sale consideration of Rs.19,79,076/- 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 25.07.2019 only and if the delay possession charges to be paid by the respondent are considered it is the respondent who has to pay even after considering the additional demands made 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.
14. Although there is substantial delay in making offer of possession i.e., 08.11.2023 after obtaining occupation certificate on 26.10.2023. But as per Section 19(10) of the Act of 2016, it is the obligation of the allottee to take possession within two months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate has been obtained by the respondent-builder and offered the possession of the subject unit to the complainant after obtaining occupation certificate on 08.11.2023. So, it can be said that the complainant would come to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is to be given to the



complainant keeping in mind that even after intimation of possession, practically one has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but that is subject to that the unit being handed over at the time of taking possession is in habitable condition.

15. In the present complaint, the valid offer of possession has already been made on 08.11.2023, thus the complainant is directed to pay the outstanding dues if any remains after adjustment of assured returns to be paid by the respondent and thereafter, the respondent shall handover the possession of the unit to the complainant within 30 days.

G.II Direct the respondent to assured return monthly to the complainant from the date when the respondent stopped giving the assured return monthly to the complainant till offer of possession in terms of MOU dated 18.04.2013

16. The complainants are seeking assured returns on monthly basis as per the MOU dated 18.06.2013 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.

17. A buyer's agreement was executed between the complainant and the respondent on 25.04.2016 by which a specific unit bearing no. F-137 has been allotted to the complainant for sale consideration of Rs.19,79,076/-. 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 25.04.2019 which includes the grace period of 3 months. Vide clause 3.1 of the MOU dated 18.06.2013, the respondent has promised an amount of Rs.96.70/- 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.

18. 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.
19. 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.



20. In the present complaint, the assured return was payable as per clause 3 of MOU dated 18.06.2013, 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.96.70/- (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 7th day of every English Calender month on due basis.

21. Thus, the assured return was payable @ Rs.96.70/- per sq. ft. of super area per month i.e., Rs.32,995/- per month w.e.f. 18.06.2013, till the possession of the said unit is handed over to the complainant.
22. The respondent in its reply dated 22.08.2024 took a plea that the complainant is not entitled to the benefit of assured returns as the space buyer's agreement dated 25.04.2016 superseded the Memorandum of understanding dated 18.06.2013. 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, as per the statement of accounts placed on record by the complainant the respondent was paying the assured returns even after the execution of buyer's agreement in terms of the MOU dated 18.06.2013.



23. In light of the reasons mentioned above, the authority is of the view that as per MOU dated 18.06.2013, 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 18.06.2013. 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 18.06.2013 at the agreed rate i.e., @ Rs.32,995/-per month from the date of execution of MOU i.e., 18.06.2013 till offer of possession i.e., 08.11.2023.

G.III Restrain the respondent from further allotting the unit of the complainant or transferring the possession of the same to any third person.

24. In the present complaint, the complainant has paid more than 100% sale consideration way back in 2013 and the cancellation of the unit also stands invalid. Moreover, the complainant wants to continue with the project, thus, the respondent is directed not to allot the unit of the complainant or transferring the possession of the same to any third person.

H. Directions of the authority:

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


- i. Cancellation dated 18.01.2024 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.32,995/- per month as per agreed terms of MOU dated



18.06.2013 per month from the date of execution of MOU i.e., 18.06.2013 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 18.06.2013 till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant 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.
 - v. The respondent is directed to execute the conveyance deed in terms of section 17(1) of Act of 2016 after payment of requisite stamp duty and registration charges by the complainant within 3 months from the date of this order.
26. Complaint stands disposed of.
27. File be consigned to registry.

Dated: 30.05.2025

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