

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

Complaint no. 4862 of 2021  
Date of filing: 10.12.2021  
Date of Order: 30.05.2025

Sameer

R/o: F2/4, First floor, DLF Phase-1, Gurugram,  
Haryana-122002

**Complainant**

Versus

M/s Sana Realtors Pvt. Ltd.  
Regd. Office at: H-69, Upper Ground Floor,  
Cannaught Circus, Cannaught Place New Delhi -  
110001

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Sh. Gaurav Rawat (Advocate)

**Complainant**

Sh. Gaurav Raghav (Advocate)

**Respondent**

**ORDER**

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

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provisions of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project-related details**

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

S.no.	Particulars	Details
1.	Name of the project	"Precision SOHO Tower", Sector 67, Gurugram
2.	Unit no.	303, Tower-A, floor - 3 <sup>rd</sup> (old unit) 335, Tower-A, floor - 3 <sup>rd</sup> (new unit) (page no.7 of reply)
	Unit admeasuring	350 sq. ft. (old unit) (page no.21 of the complaint) 525 sq. ft. (new unit) (page 39 of reply)
3.	Memorandum of Understanding	01.06.2011 (page 20 of complaint)
4.	Assured return clause	Clause 2 After receipt of consideration of Rs.850000/- (Rupees Eight Lakhs Fifty Thousand only), the Developer shall give an investment return @ Rs.55/-Per Sq. Ft. per month i.e. Rs. 19250/- (Rupees Nineteen Thousand Two Hundred Fifty Only) with effect from June 2011 on or before 15 <sup>th</sup> day of every month for which it is due till such time the developer is not able to lease the Proposed Space for a maximum period of 5 Years from the signing of this agreement subject to balance Payment as mentioned in clause 3 hereinafter.
5.	Date of execution of flat buyer's agreement	Not executed (as alleged by respondent page 4 of reply)
6.	Due date of possession	NA
7.	Letter for change of unit number to A-335 admeasuring 525 sq. ft. by respondent	05.01.2012 (page 39 of reply)

8.	Reminder letter for execution of BBA for unit no. A-335 by respondent	03.02.2012 (page 41 of reply)
9.	Request letter for possession handover by respondent	18.11.2017 (page 45 of reply)
10.	Request letter for execution of sale deed by respondent	15.03.2018 (page 47 of reply)
11.	Reminder letter for execution of sale deed by respondent	10.05.2019 (page 49 of reply)
12.	Total sale consideration	Rs.8,50,000/- (Page no. 09 of complaint)
13.	Total amount paid by the complainant	Rs.8,50,000/- (As per MOU page 23 of complainant)
14.	Assured return paid by the respondent	Rs.12,99,375/- (as alleged by respondent page 08 of reply)
15.	Occupation certificate	18.07.2017 (Page no. 37 of reply)
16.	Offer of possession	24.07.2017 for unit no. A303 (page 43 of reply)
17.	Possession handover letter issued by respondent	18.11.2017 for unit no. A-335 (page 45 of reply)

### B. Facts of the complaint:

3. The complainant has made the following submissions:

- a) That the based on promises and commitment made by the respondent, complainants booked a SOHO Apartment admeasuring 350 sq ft, unit no 303, 3<sup>rd</sup> Floor, Tower A in project "Precision SOHO Tower" at Sector 67, Gurugram, and Haryana 122102. The Sale Consideration amount of Rs.8,50,000/- was paid through cheque no 234415, ICICI Bank, dated 08.02.2011. That the complainant booked the unit in down payment plan with Assured Return.
- b) That the respondent to dupe the complainants in their nefarious net even executed MOU signed between parties on 01.06.2011, just to create a false belief that will pay investment return on down payment of Rs.8,50,000/- @ rate of Rs.55/- per sq. ft. per month i.e. Rs.19250/- per month till possession as per MOU Clause No. 2 and 6.

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- c) As per Clause 2 of the MOU the respondent was liable to paid Investment return amount of Rs.19250/ (Rs.55 per month per sq. ft. 350 sq. ft.) per month 15<sup>th</sup> day of every month from 01.06.2011 but respondent was not paid from 15.08.2017 to till date 27.11.2021. This is breach of trust.
- d) That the total value of unit is Rs.8,50,000/- (including all) as per MOU out of that respondent extracts 100% amount of Rs.8,50,000/- in same day of booking dated 01.06.2011. That respondent indulged in unfair, unreasonable, trade practice from the inception.
- e) That the complainant has repeatedly been seeking an update on the progress in the development of the project and investment return which was stopped by builder in 2017. That the complainant raised his issues about progress of project and unpaid monthly investment return through visited personally in reply builder given to them a firm assurance for give balance assured return but till date builder not paid them balance amount of assured return and offer of possession. In continuations complainant made many request through visited personally at builder office. However, the queries of the complainant was replied in lethargic manner but till date builder not resolved the issue of assured return and possession of unit The respondent was always vague and evasive to such requests. Finding his repeated efforts being thwarted and dashed. As per term of MOU Builder had committed in the MOU clause no. 2 ***"After receipt of consideration of Rs. 8,50,000/- (Rupees Eight Lakhs Fifty Thousand only), the developer shall give an investment return @ Rs. 55/- per Sq. Ft. per month i.e. Rs. 19250/- (Rupees Nineteen thousand two hundred fifty only) with effect from June 2011 on or before 15<sup>th</sup> day of every month for which it is due till such time the developer is not able to lease the proposed space for a maximum period of 5 years from the signing of this agreement***





*subject to balance payment as mentioned in clause 3 hereinafter."*  
and was accordingly obliged and liable to give possession of said unit maximum period of 5 Years from the signing of this agreement dated 01.06.2011 so respondent was liable to give possession before 30.05.2016.

- f) That the builder liable to paid assured return till possession but in this complaint, builder had started the default in very first year detail of paid instalment of assured return
- g) That the respondent at no stage informed the complainants on the status and development of the project, but demanded full payments in advance with the commitment of assured return till possession & timely possession which was never give. To meet these huge demands raised by the respondent, Complainant had to not only liquidate their investments, but had to borrow money through unsecured loan at high rate of interest.
- h) That the complainant was requesting many times in between 2017 to till date for non-payments of assured return, and status of project but builder not replied to the point and lingered on the subject matter.
- i) That the respondent has failed to meet the obligations and with malafide intentions have collected huge amount of money from the complainant. This act on part of the respondent has not only caused huge financial losses, but have also offset the family life.
- j) That the complainant with good intentions have paid all demands raised by respondent amounting to 100% of the unit cost (Sale Consideration). However, respondent has failed to meet their obligations and commitments. This undue delay in handing over the possession of the unit for more than 6 years from committed date as per agreement is not only a breach of trust but is also indicative of ill intentions of the

respondent. The act on part of respondent has caused undue financial losses and mental agony to the complainant.

- k) From the above it is abundantly clear that the respondent sold the unit in 2011, extracted 100% at the time of booking from innocent buyer by giving false promised of Assured investment Return of 19250/- per month. This was done by executing illegal, unilateral, one-sided MOU

**C. Relief sought by the complainants:**

4. The complainant has sought the following relief(s):
- I. Direct the respondent to pay assured return from 15.08.2017 till date @ Rs. 55/- per sq. ft. per Month for 350 sq ft. unit.
  - II. Direct the respondent to pay interest on due amount of assured investment return from the date of instalment of assured investment return till actual payment.
  - III. Direct the respondent to give physical possession of the unit after obtaining occupation certificate with assured first lease rentals of Rs.55/- per month per sq. ft. for unit.
  - IV. Direct the respondent to quash all the demands at the time of offer of possession.
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) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent.**

6. The respondent contested the complaint on the following grounds:
- I. That the present complaint is liable to be dismissed as the respondent had already paid the assured return for a period of more than five years thus as per the Memorandum of Understanding the same was payable maximum for a period of five years.
  - II. That the complaint is liable to be dismissed as per the MOU executed between the parties only the Courts at Delhi shall have Jurisdiction and the dispute resolution mechanism is arbitration only. As per the provisions of the Arbitration and Conciliation Act, the present complaint is not maintainable.

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- III. That the complaint filed by the complainant is also liable to be dismissed as the present project does not fall within the purview of RERA. The respondent had way back on 18.05.2015 applied with the concerned authority i.e. DTCP for the grant of the occupation certificate and the concerned authority on 18.07.2017 prior to the commencement of the Rules had granted the respondent with the occupation certificate. The said rules mentioned herein above were notified only on 28.07.2017 and therefore, cannot applied retrospectively to a project which stands completed before the Rules coming into force.
- IV. That the respondent had obtained the occupation certificate for its project despite which was an "ongoing project" even prior to the notification of the rules. The specific agreement entered into between the respondent and the complainant is prior to coming into force of the Act and Haryana Rules, hence the provisions of HRERA are not applicable to the present complaint.
- V. That the complaint filed by the complainant is liable to be dismissed as there is no agreement in respect of the unit of the complainant and as such there are no terms that were settled. MOU can't be kept at par with the flat buyer agreement as the MOU is referring to the returns on investment but has nothing about the allotment of unit. As the flat buyer agreement was not signed, hence the present matter does not come within the ambit of the HRERA.
- VI. That the entire MOU is required to read as a whole and can't be read in isolation with reference to one clause, as per the para 9 of the said MOU it was categorically agreed that the after offer of possession of the proposed space, the respondent shall stand completely discharged, absolved and relieved of all responsibilities/obligations under the said MOU including the liability to give Assured Investment Return. As the complainant was time

and again requested for signing the flat buyer agreement but it was the complainant who had neither signed the agreement nor taken the possession which was offered way back on 24.07.2017, hence the present complaint is not maintainable as the respondent was not supposed to pay the assured returns after the construction was completed.

- VII. That despite the repeated request and offering of the possession of the said space as per the said MOU, the complainant had neither settled the account nor paid the due which was to be paid to the respondent. The complainant intentionally and will fully neither signed the builder buyer agreement nor taken the possession which was offered way back on 24.07.2017.
- VIII. That the it is the admitted facts that the respondent had paid the Assured Investment Return to the complainant till the date of offering possession of the said space on 24.07.2017, hence after offer of possession of the proposed space, the respondent shall stand completely discharged, absolved and relieved of all responsibilities / obligations under the said MOU including the liability to give Assured Investment Return.
- IX. That the present complaint filed by the complainant is liable to be dismissed as the complaint have filed a false complaint and liable to be dismissed at threshold. No flat buyer agreement was entered between the parties and the complainant. The complainant failed to comply the terms of the said MOU dated 01.06.2011.
- X. That the complaint before the Authority is beyond the limitation period, hence the present complaint is liable to be dismissed. The complainant was time and again requested for signing the flat buyer agreement but the complainant neither signed the agreement nor took the possession which was offered way back on 24.07.2017.



- XI. That the present complaint filed by the complainant is not maintainable as the Occupancy Certificate is already issued on 18.07.2017 i.e. prior to the commencement of the Rule.
- XII. That the present complaint is not maintainable as per the provision of Section 19 (6) of Real Estate (Regulation and Development) Act 2016. No buyer's agreement was executed between the parties, hence there is no actual allotment of any unit in favor of the complainant and the MOU was nothing more than an agreement of advancement of some amount.
- XIII. That there was no agreement between the parties and hence there was even no time line ever fixed in respect of the construction. Even the complainant also failed to execute any flat buyer agreement.
- XIV. That initially there were high tension wires passing through the project land and the work got delayed as the agencies did not remove the same within time promised and since the work was involving risk of life, even the respondent could not take any risk and waited for the cables to be removed by the Electricity Department and the project was delayed for almost two years at the start. Initially there was a 66 KV Electricity Line which was located in the land wherein the project was to be raised. Subsequently an application was moved with the HVPNL for shifting of the said Electricity Line. HVPNL subsequently demanded a sum of Rs.46,21,000/- for shifting the said Electricity Line and lastly even after the deposit of the said amount HVPNL took about one and half years for shifting the said Electricity Line.
- XV. That until the Electricity Line was shifted the construction on the Plots was not possible and hence the construction was delayed for about two years. That the diligence of the respondent to timely complete the project and live upto its reputation can be seen from the fact that the respondent had applied for the removal of high tension wires in the year 2008 i.e. a year

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even before the license was granted to the respondent so that the time can be saved and project can be started on time.

- XVI. That the contractor M/s Acme Techcon Private Limited was appointed on 08.07.2011 for development of the project and it started development on war scale footing. In the year 2012, pursuant to the Punjab and Haryana High Court order, the DC had ordered all the developers in the area for not using ground water and the ongoing projects in the entire area seized to progress as water was an essential requirement for the construction activities and this problem was also beyond the control of the respondent, which further was duly noted by various media agencies and documented in the government department. Further since the development process was taking lot of time and the contractor had to spend more money and time for the same amount of work, which in normal course would have been completed in almost a year, due to the said problems and delay in the work, the contractor working at the site of the respondent also refused to work in December, 2012 and the dispute was settled by the respondent by paying more to the earlier contractor and thereafter appointing a new contractor M/s. Sensys Infra Projects Pvt. Ltd. in January, 2013 immediately to resume the work at the site without delay. Further, the project is complete since 2015 and the respondent has also applied for the Occupancy Certificate in May, 2015. Lastly in July, 2017 Occupancy Certificate was issued and the delay of two years was on account of the delay at the end of DTCP.
- XVII. That as far as the project is concerned the same was delivered in the year 2017 after the receipt of the Occupation Certificate. If the complainant would had any intention to purchase the unit, then at the first instance the complainant would had signed the buyer's agreement as per the terms of the MOU and further pursuant to the receipt of the letter dated 24.07.2017

offering possession, the complainant must have taken the possession of the Unit.

- XVIII. That Fire NOC for the project was issued on 09.09.2015 and an application for issuance of Occupancy Certificate was submitted with the DTCP on 18.05.2015 and lastly on account of administrative reasons the same was delayed for about two years and was lastly issued by DTCP vide memo No. ZP-589/SD (BS)/2017/17063 on 18/07/2017. There are number of other factors but as the matter / dispute of assured return is not within the pre-view of RERA, hence the respondent is reserving its right to agitate the same before the Appropriate Authority. Even the claim of the complainant is time barred.
- XIX. That the complainant had booked the space admeasuring 350 sq ft, unit no. 303, 3<sup>rd</sup> floor Tower-A in Project "Precision SOHO Tower" at Sector 67 Gurugram and Haryana 122102. The sale consideration amount of said was Rs.8,50,000/- and the same was paid by the complainant through the cheque. It is not disputed that the said space was booked by the complainant in down payment plan with Assured Return.
- XX. That after the booking of the space admeasuring 350 sq. ft., unit no. 303 the unit number and size of the unit was changed due to change in the lay out plan and lastly the complainant was offered unit no. A-335, situated on same floor i.e. 3<sup>rd</sup> floor of the project with the increase super built-up area of 525 sq. ft. vide letter dated 05.01.2012. Thus, the complainant was proposed to seek withdrawal of the booking but the complainant preferred to continue with the allocation of the new unit. Further, the cost of the increased area along with other charges were payable at the time of the offer of possession so even the same was not making any difference for the complainant.



- XXI. That complainant after entering into the MOU was supposed to enter into the builder buyer agreement for allocation of the unit, but despite the correspondence dated 05.01.2012 and 03.02.2012 the complainant failed to enter into the agreement. As far as the averment of minimum assured return is concerned, the complainant has portrayed the same in a different spirit and as if the complainant was entitled for monthly return of over 2% without any obligations.
- XXII. Clause 2 of the agreement specifically stated ".....the developer shall give an investment return @ Rs. 55/- per sq. ft. per month i.e. Rs.19,250/- w.e.f June 2011 on or before 15<sup>th</sup> day of every month for which it is due till such time the developer is not able to lease the proposed space for a maximum period of 5 years from the signing of this agreement subject to balance payment as mentioned in Clause 3...."
- XXIII. The maximum period for investment return was only for a maximum period of 5 years and the complainant was also supposed to make the balance payment. Way back on 24.07.2017 when the offer of possession was made a sum of Rs.8,81,053/- was outstanding any payable by the complainant to the respondent, which the respondent had failed to do despite reminder letters which were issued on 18.11.2017, 15.03.2018, and 10.05.2019.
- XXIV. That the complainant was liable to pay a total sum of Rs.8,81,053/- for the increased area, EDC/ IDC, Electrification, IFMS, Pre-Paid Meter Charges. Even the complainant after the offer of possession was also supposed to pay the maintenance charges to the maintenance company as well as municipal charges.
- XXV. Further it is also agreed that on completion of the construction of the proposed building/ complex containing the said proposed Space on the Third Floor in the building namely "Precision Soho Tower", Sector 67, Gurgaon,



Haryana, the complainant shall pay the EDC/ IDC and other charges in addition to the basic sale price. Further in case the buyer (Complainant herein) defaults in making the payment, the developer/respondent herein shall have the right to terminate the allotment of the proposed space in favor of the buyer and shall further have the right to deal with the proposed space as it may deem fit and proper including right to execute the lease in Developer (respondent herein) own name. In that eventuality this MOU shall stand terminated and the Developer shall return the consideration amount as paid by the Buyer to the buyer only after deducting all sums paid by the Developer on account of Assured Investment Return to the Buyer. The Memorandum of Understanding was executed on 01.06.2011 between the complainant and respondent herein.

- XXVI. That against the total invested amount of Rs.8,50,000/- the total amount as received by the complainant as assured return is Rs.12,99,375/- till Aug 2017 i.e. the month on which the complainant was offered possession.
- XXVII. That the occupation certificate was issued by the DTCP, Haryana on 18.07.2017 and till the said month the complainant kept on receiving the amount of assured return despite of the fact that the minimum assured returns were payable maximum till five years from the date of agreement. Reference is drawn to the Memorandum of Understanding and the Assured Investment Return was applicable only till signing of the First Lease (Clause 4). Further as per the terms of the Memorandum of Understanding it was incumbent on the part of the complainant to pay the EDC/ IDC and other charges in addition to the basic sale price and to get the sale deed executed after the completion of construction.
- XXVIII. That for getting the lease deed executed the execution of the sale deed is must and accordingly the complainant was immediately after the receipt

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of Occupation Certificate was intimated on 24.07.2017 to pay the consideration amount was the increased size, EDC/ IDC and other charges in addition to the Basic Sale Price and to get the Sale Deed Registered. Even after the first correspondence there was no response from the Complainant.

XXIX. Subsequently again on 15.03.2018 and 10.05.2019 reminder letters were sent to the complainant to get the Sale Deed registered so that the Lease Deed could be registered in favor of the complainant. Despite second reminder there was no response from the complainant.

XXX. That again intimation was given to the complainant on 15.03.2018 and 10.05.2019 particularly clarifying that since after the first correspondence as the Complainant is not coming forward to sign the Sale Deed and is not paying the overdue, hence the complainant is not liable to pay minimum assured return. That even after the said correspondences, the complainant failed to get the sale deed registered and it is only account of the said reason the complainant is not entitled for minimum assured return amount as per the terms of the Agreement. Thus, the respondent is entitled to terminate the allotment of unit as per the clause 7 of the Memorandum of Understanding on account of default on the part of the complainant to pay the amount as per the demand letters but still the complainant is waiting for a response of the complainant.

XXXI. That still if the complainant does not come forward to get the sale deed executed in his favor, then the complainant invoking the relevant clauses of Memorandum of Understanding and will cancel the allotted unit and MOU.

XXXII. That it is the complainant who had not complied said MOU and had breached the said MOU. Even the clause 2 stated that the investment return shall be for a maximum period of 5 years. The respondent had com-

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pleted the project in the year 2015 itself and it was with the same expectation that the occupation certificate will be issued in the year 2015 itself that the clause no. 6 was incorporated

- XXXIII. That as far as the averment of minimum assured return is concerned, the complainant has portrayed the same in a different spirit and as if the complainant was entitled for monthly return of over 2% without any obligations forever. The complainant was entitled for minimum assured return only for five years but as the respondent received the occupation certificate only in 2017, hence the respondent in good faith and for the sake of his reputation kept on paying the minimum assured return till July 2017.
- XXXIV. That initial consideration amount of the said unit was Rs.8,50,000/- which was paid by the complainant to the respondent, however the other charges of EDC, IDC etc. were excluding the basic cost. The complainant in the present matter was also liable to pay the consideration price for the increased size of the Unit.
- XXXV. As far as MOU is concerned, in para 9 of the MOU is stated that the after offer of possession of the proposed space, the respondent shall stand completely discharged, absolved and relieved of all responsibilities/obligations under the said MOU including the liability to give assured investment return. The complainant was time and again requested for signing the flat buyer agreement and execution of the sale deed since 2017 but the complainant had neither signed the agreement nor taken the possession which was offered way back on 24.07.2017. The assured investment return was payable till five years at the most but the respondent paid the same till the receipt of the occupation certificate. As on date the total amount as payable to the respondent herein by the complainant is Rs.16,28,162/- prior to the execution of the sale deed which is including interest on the delayed payments.

- XXXVI. That as per the para 9 of the said MOU it was categorically agreed that the after offer of possession of the proposed space, the respondent shall stand completely discharged, absolved and relieved of all responsibilities / obligations under the said MOU including the liability to give Assured Investment Return. As the complainant was time and again requested for signing the Flat Buyer Agreement but it was the complainant who had neither signed the Agreement nor taken the possession which was offered way back on 24.07.2017. That despite the repeated request and offering of the possession of the said space as per the said MOU, the complainant had neither settled the account nor paid the due which was to be paid to the respondent. The complainant intentionally and will fully neither signed the builder buyer agreement nor taken the possession which was offered way back on 24.07.2017.
- XXXVII. That the respondent had paid the assured investment return to the complainant till the date of offering possession of the said space on 24.07.2017, hence after offer of possession of the proposed space, the respondent shall stand completely discharged, absolved and relieved of all responsibilities / obligations under the said MOU including the liability to give Assured Investment Return.
- XXXVIII. That for getting the lease deed executed the execution of the sale deed is must and accordingly the complainant was immediately after the receipt of Occupation Certificate was intimated on 24.07.2017 to pay the consideration amount for the increase in size, EDC/ IDC and other charges in addition to the Basic Sale Price and to take the possession and get the sale deed registered. Even after numerous correspondences there was no response from the Complainant. The complainant as per the agreement need to get the same deed registered and only there after the Space could be let out on lease.



- XXXIX. That the respondent had not informed the complainant on the status and development of the project as alleged herein. The complainant was well aware that the project was complete in all respect in the year 2015 itself. If the complainant is not aware of anything so why the complainant kept on taking the assured returns till 2017. There is no cause of action in favor of the complainant and the present complaint is barred by limitation.
- XL. That the complainant was offered possession and the complainant was asked to get the sale deed registered but the complainant never responded to any of the communications. The complainant was actually intending to find out a way to enjoy monthly returns of over 2% on investment and that do without having any obligations.
- XLI. That the respondent has failed to meet the obligations or with malafide intentions had collected the said mount from the complainant. The project is ready since 2015, occupation certificate was received in 2017 and the complainant is not getting the sale deed registered in his favor by making the balance payment and is alleging that the complainant is wrong.
- XLII. That the complainant had only paid the initial amount, however the complainant has failed to pay the demands raised by respondent and failed to meet his obligations and commitments as per the said MOU.
- XLIII. That as the agreed terms of the said MOU the present complaint filed by the complainant is liable to be dismissed as per the MOU executed between the parties only the Courts at Delhi shall have Jurisdiction and the dispute resolution mechanism is Arbitration only. As per the provisions of the Arbitration and Conciliation Act, the present complaint is not maintainable
7. All other averments made in the complaint were denied in toto.
8. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be

decided based on these undisputed documents and submission made by the complainant.

**E. Jurisdiction of the authority:**

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

**E.I Territorial jurisdiction**

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be the entire Gurugram District for all purposes with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**E.II Subject matter jurisdiction.**

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

**Section 11(4)(a)**

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

**Section 34-Functions of the Authority:**

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

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



**F. Findings on the objections raised by the respondent:****F.I Objection regarding complainant bearing in breach of agreement for non-invocation of arbitration.**

13. The respondents submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute.
14. The authority is of the opinion that the jurisdiction of the Authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on the catena of judgments of the *Hon'ble Supreme Court*, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause

**F.II Objection regarding complainant being barred by limitation.**

15. So far as the issue of limitation is concerned the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is a universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid

opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority is of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances. However, this shall not apply to the provisions of section 14 where a specific period has already been defined.

16. It is also observed that the *Hon'ble Supreme Court* in its order dated 10.01.2022 in *MA NO. 21 of 2022 of Suo Moto Writ Petition Civil No. 3 of 2020* have held that the period from *15.03.2020 to 28.02.2022* shall stand excluded for purpose of limitation as maybe prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
17. Herein, the cause of action arose on 15.09.2018 when the complainant received last assured return payment as the detailed account stamen submitted by complainant (page 33 of complaint). The complainant has filed the present complaint on 10.12.2021 which is 3 years 2 months and 25 days from the date of cause of action. The three-year period of delay in filing of the case also after taking into account the exclusion period from 15.03.2020 to 28.02.2022 would fall on 22.11.2023. In view of the above, the Authority is of the view that the present complaint has been filed within a reasonable period of delay and is not barred by limitation.

**F.III Objections regarding that the respondent has obtained the occupation certificate before coming into force of RERA.**

18. The respondent/promoter has raised the contention that the said project of the respondent is a pre-RERA project as the same has already obtained occupation certificate from the competent authority on 18.07.2017 i.e., before the coming into force of the Haryana Real Estate (Regulation and Development) Rules, 2017 on 28.07.2017. As per proviso to section 3 of Act of 2016, projects that are ongoing on the date of commencement of this Act i.e., 28.07.2017 and for which completion certificate has not been issued, the



promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act and the relevant part of the Act is reproduced hereunder: -

*Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:*

19. The legislation is very clear in this aspect that a project shall be regarded as an "ongoing project" until receipt of completion certificate. It is important to note that till date, the respondent/builder has not obtained the completion certificate till the commencement of the Act, 2016. After taking note of the statutory provisions as mentioned in Section 3 of the Act of 2016, it is observed that the Act of 2016 is retroactive in nature and covers all ongoing projects for which completion certificate has not been issued by the competent authority.

20. Further, the Hon'ble Supreme Court of India in Civil Appeal No(s). **6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Private Limited vs. State of U.P and Ors.** has observed that:

*52. The Parliament intended to bring within the fold of the statute the ongoing real estate projects in its wide amplitude used the term "converting and existing building or a part thereof into apartments" including every kind of developmental activity either existing or upcoming in future under Section 3(1) of the Act, the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act.*

21. Therefore, in view of the above, the plea advanced by the respondent/promoter is hereby rejected.

**G. Findings on relief sought by the complainant.**

**G.I Direct the respondent to pay assured return from 15.08.2017 to till date @Rs. 55/- per sq. ft. per month for 350 sq. ft. unit.**

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**G.II Direct the respondent to pay interest on due amount of assured investment return from the due date of instalment of assured investment return till actual payment.**

22. 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.
23. The factual matrix of the case reveals that a MOU was executed between the parties on 01.06.2011 and a unit no. 303, 3<sup>rd</sup> floor, tower-A, admeasuring 350 sq. ft. was allotted to the complainant. The complainant has paid an amount of Rs.8,50,000/- against the sale consideration of Rs.8,50,000/-. Clause 2 of the said MoU provides for payment of assured returns to the complainant @ Rs.55/- per sq. ft. per month i.e. Rs.19250/- with effect from June 2011 on or before 15<sup>th</sup> day of every month till such time the developer is not able to lease the proposed space for a maximum period of 5 years from the signing of the agreement.
24. The complainant submits that the assured returns were to be paid until possession was handed over. On contrary the respondent contended that the complainant was entitled to the assured return only for a maximum period of five years from the signing of the agreement. It is also submitted by the respondent that although the five-year period ended in June 2016, assured returns were voluntarily paid until August 2017.
25. Admittedly the complainants in its complaint submits that it has received assured return in accordance with the MoU till August 2017. Additionally, as per the detailed statement placed by complainant (Annexure P/3) it becomes more evident that the complainant has received assured return from the June 2011 till August 2017. The question remains for the further assured return to be paid by the respondent as per the relief sought by the complainant seeking remaining assured return from 15.08.2017 till date.

26. As per the MoU dated 01.06.2011 clause 2 provides for the agreed assured return between the parties. The said clause is reproduced below:

*Clause 2*

*After receipt of consideration of Rs.850000/- (Rupees Eight Lakhs Fifty Thousand only), the Developer shall give an investment return @ Rs.55/- Per Sq. Ft. per month i.e. Rs. 19250/- (Rupees Nineteen Thousand Two Hundred Fifty Only) with effect from June 2011 on or before 15th day of every month for which it is due till such time the developer is not able to lease the Proposed Space for a maximum period of 5 Years from the signing of this agreement subject to balance Payment as mentioned in clause 3 hereinafter*

27. In accordance with the aforementioned clause, the respondent's liability to pay assured returns was contractually limited to a maximum of five years from June 2011, i.e., up to June 2016. It is, however, an admitted fact that the respondent continued to make these payments until August 2017. This continued payment, beyond the stipulated five-year period was made without any contractual obligation. Therefore, no claim for assured return subsists beyond August 2017.

**G.III Direct the respondent to give physical possession of the unit after obtaining occupation certificate with assured first lease rentals of Rs.55/- per month per sq. ft. for unit.**

**G.IV Direct the respondent to quash all the demands at the time of offer of possession.**

28. The complainant is seeking possession of Unit no. A-303, admeasuring 350 sq. ft., which was originally allotted through the MoU dated 01.06.2011. The complainant had paid the full sale consideration of Rs. 8,50,000/- for this unit. The respondent, however, claims that due to change in the layout plan, the unit was changed to A-335 admeasuring 525 sq. ft. The respondent has submitted a series of letters issued to the complainant, including a letter dated 05.01.2012 regarding the change of unit, a reminder for executing the buyer's agreement dated 03.02.2012, a possession offer dated 18.11.2017, and letters for executing the sale deed dated 15.03.2018 and 10.05.2019.

However, during the hearing on 30.05.2025, the complainant vide proceedings dated 30.05.2025 clarified that he is seeking possession of the originally allotted unit i.e. A-303.

29. The Authority finds that there is no document on record showing that the complainant ever accepted the change in unit. Moreover, although the respondent claims to have revised the unit and increased the area, they continued to pay the same assured return amount from June 2011 to August 2017. Had the complainant accepted the revised unit with a larger area, the monthly assured return should have increased accordingly, which did not happen. Therefore, in the absence of any written acceptance of the new unit by the complainant and considering that the full payment for Unit A-303 was already made, the respondent is under an obligation to hand over possession of allotted unit A-303 and is not entitled to raise any further demand from the complainant.
30. Further, the complainant has sought assured first lease rentals at the rate of Rs.55/- per sq. ft. per month for the unit. However, the Authority finds that the complainant has failed to substantiate any agreed terms between the parties wherein the respondent had undertaken to pay lease rentals in addition to the assured return. Accordingly, the relief sought in respect of lease rentals is rejected.

**H. Directions issued by the Authority:**

31. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
1. The respondent is directed to handover the possession of the original allotted unit i.e. A-303 in terms of the MoU dated 01.06.2011.



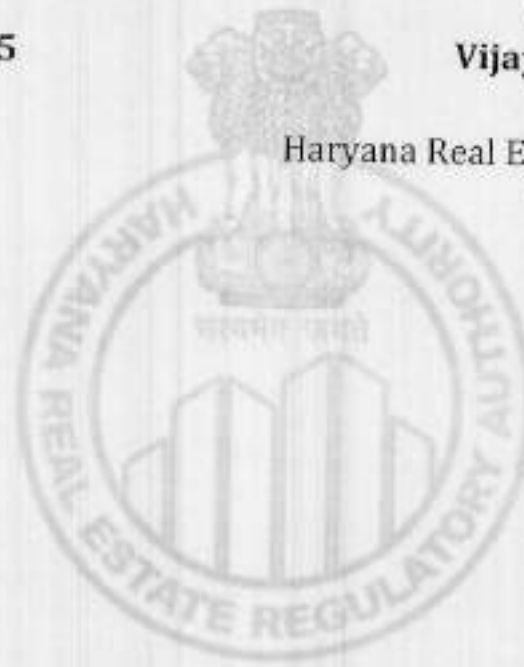
11. The respondent shall not charge anything which is not the part of the MoU dated 01.06.2011
32. Complaint stands disposed of.
33. File be consigned to the Registry.

**Dated: 30.05.2025**

*Vijay Kumar Goyal*

**Vijay Kumar Goyal**  
**(Member)**

Haryana Real Estate Regulatory Authority,  
Gurugram



**HARERA**  
**GURUGRAM**