

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

Complaint no.	:	1589 of 2023
Date of filing	:	24.04.2023
Date of decision	:	22.04.2025

Priyadarshini R/o: 29, Sector 15 Part-I, Gurugram, Haryana-122001.	Complainant
Versus	
M/s Sana Realtors Pvt. Ltd. Office address: H-69, Upper Ground Floor, Outer Circle, Connaught Place, New Delhi-110001	Respondent

CORAM:

Shri Arun Kumar	Chairman
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member

APPEARANCE:

Mr. Gaurav Rawat	Counsel for the complainant
Mr. Gaurav Raghav	Counsel for the respondent

ORDER

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

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

A. Project and unit related details

2. The particulars of the project, the amount of 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.	Name of the project	"Precision Soho Tower" Sector-67, Gurugram, Haryana-122102.
2.	Nature of the project	Commercial complex
3.	DTCP license no. and validity status	72 of 2009 dated 26.11.2009. Valid/renewed up to- 25.11.2019. Licensee- Sh. HARI SINGH Licensed area- 2.456 acres
4.	RERA Registered/ not registered	Not registered
5.	Date of booking	17.07.2010 [page-8 of complaint]
6.	Unit no.	38, Tower-B, Ground Floor [Page 23 of complaint]
7.	Unit admeasuring	Super Area-437sq.ft. [Note-Subject to final confirmation +/- 10% of area on completion of the project] (Page 23 of the complaint)
8.	Increase in area	486 sq. ft. (page no. 7 of reply)
9.	MoU signed (Note: -complainant + Mr. Vivek Mohan & respondent)	20.07.2010 [Annexure-P2 of complaint at page 22]
10.	Operating clause of MOU regarding assured return	<u>As per Clause 2 of MOU</u> <i>After receipt of consideration of Rs. 1180000/-, the developer shall give an investment return @ Rs. 60/- per Sq. Ft. per month i.e. Rs. 26220/- with effect from 10th January 2011 on or before</i>

		10 th day of every month for which it is due till the property is leased out. [page 28 of complaint]
11.	BBA	Not executed
12.	Fire Non-Objection certificate received	09.09.2015 (As per Annexure R-1 of reply)
13.	Occupation certificate received	18.07.2017(For tower A, C) 10.10.2019 (For tower B) *Note: Complainant's unit falls under tower B [As per Annexure R-2 at page 9 & 18 of reply]
14.	Payment Demand Raised for Offer of possession	17.10.2019 [As per Annexure R-3 at page 20 of reply]
15.	Total sale consideration (As per clause 1 of MoU)	Rs.11,80,000/- [Page 23 of complaint] [Note: Onetime payment at the time of booking]
16.	Total sale consideration as per respondent	Rs. 16,29,780 [EDC/IDC other charges in addition to basic sale price][page 8 of reply]
17.	Amount paid by the complainant	Rs.11,80,000 /- (as admitted by the respondent at page 8 of reply)
18.	Assured return paid by the respondent to the complainant w.e.f January 2011 till December 2014 (Page 8 of reply)	Rs. 12,58,560/- [as per Clause 2 of MOU Rs.26220/- per month 10 th day of every month w.e.f. 10.01.2011]
19.	Outstanding payment of complainant for the EDC/IDC/Electrification/IFMS & Meter charges by (as per letter dated 17.10.2019 i.e., payment demand "On Offer of Possession")	Rs.4,95,154/- [Page-7 of reply]

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:



- a. That the complainant is a law abiding citizen and consumer who have been cheated by the malpractices adopted by the respondent being a developer and promoter of Real estate, since long time. Based on the advertisement and the brochure circulated complainant showed interest in purchasing a Precision SOHO shop in the Project "Precision SOHO Tower" being developed by respondent in "Precision SOHO Tower".
- b. That based on promises and commitment made by the respondent, complainant booked a Precision SOHO Shop no. 38, tower B admeasuring 437 sq ft, in project "Precision SOHO Tower" at Sector 67, Gurugram, and Haryana 122102. The sale consideration amount of Rs 11,80,000/- was paid by the complainant. He booked the unit in down payment plan with assured return.
- c. That the respondent to dupe the complainant in their nefarious net even executed MOU signed between M/S Sana Realtors Pvt. Ltd. and complainant on dated 20.07.2010, just to create a false belief that the respondent would pay investment return on down payment of Rs 11,80,000/- @ rate of Rs 60/- per Sq ft per month i.e. Rs 26220/- per month till possession as per MOU clause No. 2 and 6.
- d. That as per clause 2 of the MOU, the respondent was liable to be paid investment return amount of Rs 26220/ per month on 10th day of every month from 10.01.2011 but respondent was not paid from 10.01.2015 till date of filing of complaint.
- e. That the total value of unit is Rs 11,80,000/- as per MOU out of that respondent extracts 100% amount of Rs 11,80,000/- in same day of



booking dated 17.07.2010. Respondent indulged in unfair, unreasonable, trade practice from the inception.

- f. 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 2015. The complainant raised her issues about progress of project and unpaid monthly investment return by personally visiting the builder who gave them a firm assurance to pay the balance assured return, but till date the builder had not paid them balance amount of assured return and possession had also not been offered.
- g. That the builder liable to paid assured return till the unit is put to first lease after obtaining O.C. but in this complaint builder had started the default in very first year.
- h. That the builder sent the offer of possession to complainant on 17.10.2019 and raised the further demand whereas assured return of complainant was due from 2015.
- i. That the respondent at no stage informed the complainant on the status and development of the project, but demanded full payments in advance with the commitment of assured return till first lease/possession & timely possession which was never given.
- j. That the complainant requested many times in between 2015 to till date for payment of assured return, and update on status of project but builder did not replied to the point and lingered on the subject matter.



- k. That the complainant with good intentions have paid all demands raised by respondent amounting to 100% of the unit cost; however, respondent has failed to meet their obligations and commitments.
- l. That from the above it is abundantly clear that the respondent sold the unit in 2010, extracted 100% at the time of booking from innocent buyer on false promise of giving assured investment return of 26,220/- per month. This was done by executing illegal, unilateral, one-sided MOU.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - a. Direct the respondent to pay assured investment return from 10 January, 2015 till 1st lease, but the builder had not leased the property so it will payable till actual physical possession which was also not given by builder after many requests of unit @ Rs. 60/- per sq ft. per month for 437 Sq Ft. unit i.e Rs. 26220. per month with physical possession of unit under RERA Act, 2016 rules and regulations thereunder.
 - b. 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.
 - c. Direct the respondent to pay the delayed possession charges as prescribed by the Authority.
 - d. Direct the respondent to give physical possession of the unit with conveyance deed and necessary documents under the Act 2016, rules and regulation thereunder after obtaining completion

certificate with as per clause-2 and clause -6 of the MOU with assured first lease Rentals of Rs. 60/- per month per sq. ft. for 437 sq ft. unit.

- e. Direct the respondent to quash one sided clause 5 of the MOU "right to execute the lease in developer's own name in the eventually this MOU shall stand terminated and the developer shall return the consideration amount as paid by the buyer.
 - f. Direct the respondent to quash all the demands at the time of offer of possession 100% amount as already paid to the respondent at the time of booking and before signing of MOU if any amount due as per MOU than adjust the amount in Assured return at the time of possession.
5. On the date of hearing, the authority explained to the respondent/ promoters about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent by way of written reply made the following submissions:
- a. That at the outset it is submitted that the present complaint is not maintainable as the HRERA /RERA was incorporated for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector. Per contra the



complainant in the present matter is not a customer but actually a business arrangement to have monthly returns on the investment and with other terms and conditions as were agreed upon.

- b. That the present complaint is barred on account of the provisions of the Arbitration and Conciliation Act. The present complaint is liable to be dismissed at the very threshold as the same is barred by Section 8(1) of the Arbitration & Conciliation Act, 1996. It is pertinent to note that there exist an arbitration clause which is a part of the memorandum of understanding.
- c. That the contractual liability is based only on the memorandum of understanding and relied upon by the complainant, which consist of an arbitration clause. Moreover, the complete transaction which took place between the parties is the subject of arbitration agreement. The Authority does not have the jurisdiction to adjudicate the present suit as the same is barred by section 8 of the Arbitration & Conciliation Act, 1986. The Apex Court has held in catena of its judgments that where an arbitration agreement exists between the parties and either of the party brings an action before the judicial authority, the judicial authority shall refer the matter to arbitration.
- d. That as the complete complaint is revolving around the memorandum of understanding dated 20.07.2010 executed between the parties and as the agreement is apparently not a builder buyer agreement, containing clauses of assured returns, hence the present complaint is not maintainable before the

Authority as the disputes related to memorandum of understanding.

- e. That the present complaint filed by the complainant is liable to be dismissed as in the memorandum of understanding dated 20.07.2010 it is categorically mentioned that the disputes, if any, would be subject to the jurisdiction of the courts at New Delhi.
- f. That the present 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 buyer agreement as the MOU is referring to the returns on investment but has nothing about the allotment of unit. As the buyer agreement was not signed, hence the present matter does not come within the ambit of the HRERA.
- g. 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 first lease out 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 buyer agreement but it was the complainant who had neither signed the agreement nor taken the possession which was offered way back on October 2019, hence the present complaint is not maintainable as the respondent was not

supposed to pay the assured returns after the construction was completed.

- h. That already an amount of Rs. 12,58,560/- paid to the complainant on the investment of Rs. 11,80,000/- as per the terms of the memorandum of understanding dated 20.07.2010.
- i. That the complainant thus didn't signed the builder buyer agreement, but still the complainant as per the terms of the memorandum of understanding dated 20.07.2010 was offered possession of the unit no. 38 in the project namely Precision SOHO Tower, Gurgaon on 17.10.2019. On the date of the offer of the possession a sum of Rs.4,95,154/- was outstanding and payable by the complainant. As on date after including interest @ 12% per annum a sum of Rs. 7,33,127/- is outstanding and payable by the complainant. As far the payment of the minimum assured returns is concerned the complainant was paid the minimum assured return of Rs. 12,58,560/- on his investment till December 2014. It is only on account of the failure of the complainant to get the sale deed registered after making the balance payment on the offer of possession, the unit could not be leased out. The complainant against the investment of Rs. 11,80,000/- have already received a sum of Rs. 12,58,560/- and is not qualified for the reliefs under HRERA.
- j. That the present complaint filed by the complainant is liable to be dismissed as in the projects wherein the Occupation Certificate is

issued prior to the enactment of HRERA, hence the complaint is not maintainable.

- k. 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 buyer agreement.
 - l. That the present complaint filed by the complainant is liable to be dismissed as the complainant had made false allegations against the respondent without any substantial evidence, hence the present complaint is not maintainable and is liable to be dismissed with heavy cost.
 - m. That as far as the project is concerned the same was delivered in the September 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 buyers agreement as per the terms of the MOU and further pursuant to the receipt of the letter dated October 2019 offering possession, the complainant must have taken the possession of the unit.
 - n. All other averments made in the complaint were denied in toto.
7. Copies of all relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submissions made by parties.

E. Jurisdiction of the authority



8. The plea of the respondents regarding rejection of complaint on ground of jurisdiction stands rejected. 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

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

E. II Subject matter jurisdiction

10. 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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

11. 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 respondent

F.I Objection regarding complainant beaing in breach of agreement for non-invocation of arbitration

12. The respondent had raised an objection that the complainant has not invoked arbitration proceedings as per the provisions of memorandum of understanding executed between the parties on 20.07.2010, which contains provisions regarding initiation of arbitration proceedings in case of breach of MoU. The following clause has been incorporated w.r.t arbitration in the buyer's agreement:

"13. That all disputes or differences arising between the Parties under or in relation to this Memorandum of Understanding, shall be resolved by reference to Arbitration in accordance with the Arbitration and Conciliation Act, 1996. The venue of arbitration shall be New Delhi only."

13. The Authority is of the opinion that the jurisdiction of the Authority cannot be fettered by the existence of an arbitration clause in the MoU 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-abatable 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 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.

14. Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017***, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainant and builders could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short "the Real Estate Act"). Section 79 of the said Act reads as follows:-

"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellate Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra), the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.

...



56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainant and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."

15. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the agreement, the hon'ble Supreme Court **in case titled as M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018** has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. The relevant para of the judgement passed by the Supreme Court is reproduced below:

"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

16. Therefore, in view of the above judgements and considering the provisions of the Act, the Authority is of the view that complainant are well within their

rights to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this Authority has the requisite jurisdiction to entertain the complaint and that the dispute is not required to be referred to arbitration necessarily.

G. Findings on the relief sought by the complainant.

- G.I.** Direct the respondent to pay assured investment return from 10 January, 2015 to till 1st lease but builder not leased the property so it will payable till actual physical possession which was also not given by builder after many requests of unit @ Rs. 60/- per sq ft. per month for 437 Sq Ft. unit i.e. Rs. 26220. per month with physical possession of unit under RERA Act, 2016 rules and regulations thereunder.
- 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 to till actual payment.
- G.III** Direct the respondent to pay the delayed possession charges as prescribed by the Authority.
- G. IV** Direct the respondent to give physical possession of the unit with conveyance deed and necessary documents under the Act 2016, rules and regulation thereunder after obtaining completion certificate with as per clause-2 and clause -6 of the MOU with assured first lease Rentals of Rs. 60/- per month per sq. ft. for 437 sq. ft. unit.
- G. V** Direct the respondent to quash one sided clause 5 of the MOU "right to execute the lease in developer's own name in the eventually this MOU shall stand terminated and the developer shall return the consideration amount as paid by the buyer.
- G.VI** Direct the respondent to quash all the demands at the time of offer of possession 100% amount as already paid to the respondent at the time of booking and before signing of MOU if any amount due as per MOU than adjust the amount in Assured return at the time of possession.

I. Assured returns



17. The complainant in the present matter is seeking assured return as per MoU dated 20.07.2010. Vide clause 2 of the MOU the respondent agreed to pay a monthly investment return @ ₹26,220/- per sq. ft. w.e.f. 10th January 2011 on or before 10th day of every month for which it is due till the property is leased out. The relevant clause is produced for the ready reference:

"After receipt of consideration of Rs.1180000/- (Rupees Eleven Lakhs Eighty Thousand only), the developer shall give an investment return @ Rs.60/- per sq. ft. per month i.e., Rs.26,220/- (Rupees Twenty Six Thousand Two Hundred Twenty Only) with effect from 10th January 2011 on or before 10th day of every month for which it is due till the property is leased out."

18. It is pleaded that the respondent has not complied with the terms and conditions of the MOU. Although the assured returns were paid by the respondent for some time, i.e., until December 2014, the respondent later refused to continue such payments, claiming that possession had been offered by it far back in October 2019 and that they were not obligated to pay assured returns after the completion of construction.
19. The money was taken by the builder as a deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the Authority for redressal of his grievances by way of filing a complaint.
20. It is not disputed that the respondent is a real estate developer, and it had not obtained registration under the Act of 2016 for the project in question.



However, the project in which the advance has been received by the developer from the allottees is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent is liable to pay assured return to the complainant-allottee in terms of the MoU dated 20.07.2010.

II. Delay possession charges.

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

Section 18: - Return of amount and compensation

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

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

22. The subject was booked by the complainant on 17.07.2010. Thereafter, a MoU was executed between the parties on 20.07.2010. The due date of possession had to be calculated from the date of MoU in view of "**Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018**". Accordingly, the due date of possession comes out to be 20.07.2013. As per the MoU, the respondent developer was under an obligation to lease out the unit of the complainant.

23. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. Proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under Rule 15 of the Rules. *ibid.* Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19

For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public

24. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules, *ibid* has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 22.04.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
25. 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—

the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid."

26. On consideration of documents available on record and submissions made by the complainant and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be completed within a stipulated time i.e., by 20.07.2013.
27. However now, the proposition before it is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges?
28. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the MoU. The assured return in this case is payable as per "MoU". The rate at which assured return has been committed by the promoter is Rs.60/- per sq. ft. of the super area per month till the property is leased out. If we compare this assured return with delayed possession charges payable under proviso to Section 18(1) of the Act, 2016, the assured return is much better i.e., assured return in this case is payable at Rs.26,220/- per month till the property is leased out whereas the delayed possession charges are payable approximately Rs.10,915/- per month. By way of assured return, the promoter has assured the allottee that they would be entitled for this

specific amount till the property is lease out. Moreover, the interest of the allottee is protected even after the completion of the building as the assured returns are payable even after completion of the building. The purpose of delayed possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottee as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges whichever is higher.

29. Accordingly, the Authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under Section 18 and assured return is payable even after due date of possession till the date of completion of the project, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.
30. On consideration of the documents available on the record and submissions made by the parties, the complainant has sought the amount of unpaid amount of assured return as per the MoU. As per the MoU dated 20.07.2010, the promoter had agreed to pay to the complainant allottee Rs.60/- per sq. ft. on monthly basis till the property is leased out. The said clause provides that it is the obligation of the respondent promoter to lease the premises. It is matter of record that the assured return was paid by the respondent-promoter till December 2014 at the rate of Rs.60/- per sq. ft., but later on after December 2014, the respondent refused to pay the same by taking a plea that possession had been offered far back in October 2019

and that they were not obligated to pay assured returns after the completion of construction.

31. In the present complaint, the Occupation Certificate for tower B was granted by the competent authority on 10.10.2019. However, the respondent made the offer of possession to the complainant on 17.10.2019. Moreover, no document has been placed on record to show that the property has been leased out. Therefore, as per Clause 2 of the MOU dated 20.07.2010, the respondent is obligated to pay the assured return until the property is leased out, and not merely till the date of the offer of possession to the allottee. Further, it is observed that the respondent had paid assured returns @ Rs.60/- per sq. ft. per month from January 2011 till December, 2014 to the complainant as admitted by the respondent at page 5 of reply. Accordingly, the respondent is directed to pay the assured return at the agreed rate of ₹60/- per sq. ft. per month, commencing from January 2015, on or before the 10th day of each month for which it is due, until the property is leased out.
32. The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @ 9.10% p.a. till the date of actual realization.
33. Further, the Authority observes that the respondent-promoter has obtained Occupation Certificate of the said project from the competent authority on 10.10.2019. Section 17(1) of the Act of 2016 obligates the respondent-promoter to handover the physical possession of the subject

unit to the complainant complete in all respect as per specifications mentioned in MOU and thereafter, the complainant-allottee is obligated to take the possession within 2 months as per provisions of Section 19(10) of the Act, 2016.

34. In view of the above, the respondent is obligated to handover the possession of allotted unit to the complainant complete in all respect as per specifications of MoU within a period of one month from date of this order after payment of outstanding dues, if any, as the Occupation Certificate for the project has already been obtained by it from the competent authority.

III Conveyance deed

35. With respect to the conveyance deed, clause 8 of the BBA provides that the respondent shall sell the said unit to the allottee by executing and registering the conveyance deed and also do such other acts/deeds as may be necessary for confirming upon the allottee a marketable title to the said unit free from all encumbrances.
36. Section 17 (1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title.-

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by

the promoter within three months from date of issue of occupancy certificate."

37. The respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the Occupation Certificate/ Completion Certificate from the competent authority. Whereas as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question. In view of above, the respondent shall execute the conveyance deed of the allotted unit within a period of 3 months from date of this order, upon payment of outstanding dues and requisite stamp duty by the complainant as per norms of the state government as per Section 17 of the Act, 2016.

H. Directions of the Authority

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

- a. The complainant is directed to pay monthly assured return of ₹26,220/- as agreed by both the parties vide clause 2 of the MoU dated 20.07.2010 from the date on which the said amount was made due by the respondent i.e., January, 2015 till the property is leased out.
- b. The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any from the complainant and failing which that amount would be payable

with interest @ 9.10% p.a. till the date of actual realization.

- c. The respondent is directed to handover the possession of allotted unit to the complainant complete in all respect as per specifications of MoU within a period of one month from date of this order after payment of outstanding dues, if any, as the Occupation Certificate for the project has already been obtained by it from the competent authority.
 - d. The respondent directed to execute the conveyance deed of the allotted unit within the 3 months after the receipt of the OC from the concerned authority and upon payment of requisite stamp duty by the complainant as per norms of the state government.
 - e. The promoter shall not charge anything which is not part of the MoU.
39. The complaint stands disposed of.
40. File be consigned to registry.

(Ashok Sangwan)
Member

(Arun Kumar)
Chairman

V.I. (Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.04.2025