

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

Complaint no.: 1327 of 2022
Date of filing: 29.03.2022
Date of order: 29.07.2025

1. Ashwani Kumar
2. Kanchan Sethi

Both R/o: S-321, SF front, Greater Kailash -II,
New Delhi-110048.

Also at: H. No. 328, 1st floor, Pocket B, Sector
8, Dawarka, and New Delhi-110075.

Complainants

Versus

M/s Orris Infrastructure Pvt. Ltd.

Regd. Office: C-3/260, Janakpuri, West Delhi,
New Delhi-110058

Also at: J-10/9, DLF Phase II, M.G. Road,
Gurugram, Haryana-122002

Respondent

CORAM:

Shri Arun Kumar

Shri Ashok Sangwan

Chairman

Member

Appearance:

Shri Navin Kumar (Advocate)

Shri Charu Rustagi (Advocate)

Complainants

Respondent

ORDER

1. The present complaint has been filed by the complainant-allottees in Form CRA 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 to the allottee as per the agreement for sale executed inter se them.

A. Project and unit related details.

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), 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	"Orris Business Square", Sector 82A, Gurugram
2.	Project area	9.5 acres
3.	Nature of the project	Commercial complex
4.	DTCP license no.	185 of 2008 dated 29.10.2008
	License valid till	28.10.2018
	Name of licensee	Cranes Developers Pvt. Ltd.
5.	RERA Registered/ not registered	Not registered
6.	Unit no.	704, 7 th floor, tower C (Page 15 of complaint)
7.	Unit area admeasuring	500 sq. ft. (super area) (Page 15 of complaint)
8.	MOU w.r.t. assured return executed on	10.04.2010 (Page 12 of complaint)
9.	Addendum to MOU dated 10.04.2010 executed on	26.12.2018 (Page 25 of complaint)
10.	Date of execution of buyer's agreement	Not executed
11.	Possession clause	NA
12.	Total sale consideration as per clause 2 of MOU	Rs.15,00,000/- (Page 15 of complaint)
13.	Amount paid by the complainant as per clause 3 of MOU	Rs.15,00,000/- (Page 15 of complaint)
14.	Assured Return clause as per MOU dated 10.04.2010	2. <i>After receipt of consideration of Rs.15,00,000/- (Rupees Fifteen Lacs only), the Developer shall give an investment return @ 60/- per sq. ft. per month i.e., Rs.30,000/- (Rupees Thirty Thousand only) with effect from 1st May, 2010 on or before</i>



		<i>7th day of every month for which it is due up to the first 36 months after completion of the building or till the date the said office space is put on lease, whichever is earlier.</i> (Page 15 of complaint)
15.	Assured return as per addendum to MOU dated 26.12.2018	1. <i>That in this Addendum both parties mutually agrees that the Committed Return which was previously payable every month on or before _ day of every month as per clause 2.2 of Memorandum of Understanding dated 10 APRIL 2010 Now committed return shall be payable after every 06 months from the date of this Addendum for the last 6 months Assured Return, amount of Rs.1,81,440/- after deducting TDS.</i> (Page 26 of complaint)
16.	Assured return paid by the respondent	Rs.31,38,000/- till December 2018 (Page 2 of reply)
17.	Occupation certificate /Completion certificate	Not obtained
18.	Offer of Possession	Not offered

B. Facts of the complaint.

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

- That upon the assurance given by the respondent, a memorandum of understanding dated 10.04.2010 was executed between the complainants and the respondent (hereinafter referred to as "MOU") wherein, the complainants were allotted an office space bearing unit no. 704 on the 7th floor of Tower C admeasuring the tentative super area of 500 sq. ft. in the in the project of the respondent "*Orris Business Square*" situated at Village Shikohpur, Sector – 82A, District Gurugram, Haryana. The complainants paid a total sum of Rs.15,00,000/- against the said unit to the respondent at the time of execution of the said MOU.
- That the complainants agreed on the terms and conditions of the MOU and has specifically opted for the Assured Investment Return Plan. As per the



clause 2 of the MOU, it was agreed between the parties that after receipt of Rs.15,00,000/- the respondent was under the obligation to pay return @Rs.60/- per sq. ft. per month of the super area of the unit i.e. Rs.30,000/- with effect from 01.05.2010 on or before 7th day of every month for which it is due up to the first 36 months after completion of the building or till the date said office is put on lease, whichever is earlier.

- c. That as per clause 5 of the MoU, it was agreed between the parties that the respondent upon completion of the construction of the said project land comprising of the said unit and after all amounts due have been paid with respect thereof in full by the buyer, shall cause the said unit to be leased out at a minimum rental of Rs.60/- per sq. ft. per month. No amount whatsoever is due upon the complainants as all the payments were made in advance by the complainants.
- d. That the complainants have complied with all the obligations as agreed under the said MoU. However, the respondent has breached the terms and conditions of the same and failed to fulfil its contractual obligations since it has arbitrarily stopped paying the assured return from 01.01.2019 and completely failed to deliver the possession of the said unit as agreed under the said MoU.
- e. That the complainants several times has reminded the respondent on their contractual obligation under the MoU for the non-payment of the assured investment return and handing over the physical possession of the said unit. However, the respondent has not paid any heed to the same and even failed to respond to the complainants for not complying with the agreed terms and conditions between the parties.
- f. That when the respondent did not respond to any of the calls of the complainants, the complainants on 26.12.2018 visited the office of the



respondent for the non-payment of the assured investment return and handing over the physical possession of the said unit. Upon which the respondent gave assurance to the complainants that the respondent will pay the assured investment return and hand over the physical possession of the said unit and requested the complainants to make an addendum to the said MOU. Upon the assurance given by the respondent, the complainants agreed to execute an addendum to the said MOU dated 26.12.2018 and as per clause 1 of the said addendum, it was agreed that *"The Assured Investment Return which was previously payable every month on or before 7th day of every month as per clause 2 of MOU dated 10.04.2010. Now committed return shall be payable after every 06 months from the date of this Addendum for the last 06 months Assured Return, amount of Rs.1,81,440/- after deducting TDS."*

- g. That at the time of execution of the above said addendum, the respondent also agreed that the non-payment of the assured return from the period of 01.04.2017 to 31.07.2018 which is equivalent to amount Rs.4,80,000/- shall be added to the capital amount paid by the complainant's after deducting the TDS. Hence, the total capital amount paid by the complainants to the respondent is equivalent to Rs.19,32,000/-. The respondent also assured the complainant's that the interest @ 10% p.a. i.e. Rs.3600/- per month shall be paid on the addition capital of Rs.4,32,000/- along with the assured return of Rs.30,000/- per month.
- h. That even after passing of more than 3 years from the date of the addendum, the respondent neither paid any assured investment return to the complainants nor it has been leased out by the respondent at the pre-decided rental terms and conditions. In spite of inexplicable delay of nearly 11 years from the date of execution of the said MOU, the respondent has



failed in handing over the possession of the said unit and also failed to pay assured investment return to the complainants (w.e.f. 01.01.2019). That the respondent neither paid the assured return to the complainants nor even started the construction of the project land till date.

- i. That complainants repeatedly visited the office of the respondent and requested for the payment of assured investment return amount, however the respondent with *malafide* intention to cheat the complainants, neither paid the agreed assured investment return due amount nor gave possession of the said unit. The respondent has failed to comply with the agreed terms and conditions of the MOU and the Addendum. The complainants have sent legal notice dated 12.07.2021 to the respondent calling upon them to fulfil their contractual obligation of handing over the actual, physical possession of the unit along with assured investment return.
- j. That the present complaint is being filed under section 31 of Act read with rule 28 of the rules, 2017 for violation of the section 11(4)(a) of the Act on behalf of the complainants against the respondent for failure in the contractual obligation, deficiency in service, violation of the terms and conditions of the MOU. That there is an inordinate delay of nearly 11 years from the date of execution of the said MOU and the respondent has failed in handing over the possession of the said unit. The respondent has violated the provisions of the Act and its prolonged delay in handing over possession of the unit, arbitrary actions and commission of various unreasonable and unfair trade practices has caused innumerable challenges and hardships to the complainants. Hence, this complaint.

C. Relief sought by the complainant:

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

- a. Direct the respondent to handover the possession of the fully developed unit to the complainants.
 - b. Direct the respondent to pay amount against assured return of Rs.10,88,640/- (after TDS) w.e.f. 01.01.2019 till 31.12.2021 along with an interest of 12% p.a. from 01.01.2019 till the date of actual repayment to the complainants.
 - c. Direct the respondent to pay interest @ 24% p.a. to the complainants, every month of delay till the handing over of possession.
 - d. Direct the respondent to pay Rs.50,000/- to the complainants as cost of present litigation.
5. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent contested the complaint on the following grounds:
- a. That the complainants are not allottees but investor who are only seeking assured return from the respondent by way of present complaint which is not maintainable under the Act. The complainants have no intention to have any property and have invested the money only to get the assured return. The complainants have already received money more than they have invested with the respondent company and the same has nowhere been disclosed in the entire complaint. However, after entering into MOU dated 10.04.2010, the complainant is governed by the terms and conditions stated therein and the complainants are left with no right to ask for the amount of assured return though the respondent as a good entrepreneur continued to pay the amount till December 2018 admittedly.
 - b. That the respondent had received the booking for unit no. 704 on 7th floor admeasuring super area of 500 sq. ft. in the project "Orris Business Square", Sector 82A, Gurugram, Haryana for a sale consideration of Rs.15,00,000/-. The complainants have paid Rs.15,00,000/- against the said unit. The MOU

was executed between the complainant and the respondent on 10.04.2010. However, no space buyer's agreement was ever executed inter se parties.

- c. That the complainants have booked the subject unit by way of MOU and as per MOU, the complainants have been receiving assured return in the form of profit and thus, the complainants are investors and not the allottees as they have booked the said unit with a sole motive to earn profit. As per the terms of MOU, the respondent was to pay assured return amounting to Rs.30,000/- per month either for a period of 3 years after completion of building or till the time the unit was put on lease. The respondent in aforesaid terms continued to pay assured return to the complainant up to December 2018. The total assured return paid by the respondent to the complainants till December 2018 amounts to Rs.31,38,000/-.
- d. That presently, the respondent is not able to deliver the project in question nor is able to pay monthly assured return as the respondent holds no liability of paying assured return. However, the respondent is still without any admission or denial ready to refund the principal amount received from the complainants.
- e. That as per the MOU, the assured return is not a formal clause with regard to giving or taking possession of the unit for which the complainant has paid an amount of Rs.15,00,000/- to the respondent which is not within the purview of the Act. Since the Act of 2016 deals with the builder buyer relationship to the extent of timely delivery of possession to the buyer or deals with withdrawal from the project as per section 18 of the Act.
- f. That the authority has no jurisdiction in cases pertaining to assured return as has already been decided by this Authority in *Bharam Singh and Ors. Vs. M/s Venetian LDF Projects LLP & ors. in CR/175/2018*. Further, the Authority has no jurisdiction to entertain the present complaint as the unit allotted to



the complainant was under the assured return scheme and therefore, the matter falls under the Banning of Unregulated Deposit Schemes Act, 2019.

- g. That the respondent has made payment of the amount of assured return to the complainants up to March 2017 as per the definition of deposit under the Companies Act, 2013 read with the Companies (Acceptance of Deposits) Rules, 2014.

E. Jurisdiction of the Authority.

7. The respondent has raised preliminary objection regarding jurisdiction of Authority to entertain the present complaint. 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

8. 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

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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

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

F. Findings on the objections raised by the respondent

F.I Objection regarding maintainability of complaint on account of complainant being investor.

11. The respondent took a stand that the complainants are investors and not allottees and therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the MOU, it is revealed that the complainants are buyers, and they have paid a considerable amount to the respondent-promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below 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;"

12. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the MOU executed between promoter and complainants, it is crystal clear that the complainants are allottees as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to

in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of the promoter that the complainants/allottees being investors are not entitled to protection of this Act stands rejected.

F.II Objection regarding non-payment of assured return due to implementation of BUDS Act.

13. The respondent/promoter raised the contention that the respondent has stopped the payment of assured return due to implementation of BUDS Act by legislature, as the BUDS Act bars the respondent for making payment of assured return and assured rental linked with sale consideration of immovable property of allottee(s). But the Authority in **CR/8001/2022** titled as "**Gaurav Kaushik and Anr. Vs. Vatika Ltd.**" has already held that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon and the Act of 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per Section 2(4)(I)(iii) of the BUDS Act of 2019. Hence, the plea regarding the jurisdiction of the Authority to adjudicate cases pertaining to assured returns is hereby dismissed.

G. Findings on the relief sought by the complainants

- G.I Direct the respondent to handover the possession of the fully developed unit to the complainants.**
- G.II Direct the respondent to amount against assured return of Rs.10,88,640/- (after TDS) w.e.f. 01.01.2019 till 31.12.2021 along with an interest of 12% p.a. from 01.01.2019 till the date of actual repayment to the complainants**
- G.III Direct the respondent to pay interest @ 24% p.a. to the complainants, every month of delay till the handing over of possession**

14. In the present complaint, the complainants intend to continue with the project and are seeking possession along with delayed possession charges and assured return as per memorandum of understanding. The complainants were allotted an office space bearing unit no. 704 on the 7th floor, Tower C admeasuring the tentative super area of 500 sq. ft. in the project of the respondent "Orris Business Square" situated at Village Shikohpur, Sector - 82A, Gurugram, Haryana for a total sale consideration of Rs.15,00,000/- as per clause 2 of MOU. They have paid a total sum of Rs.15,00,000/- against the said unit to the respondent at the time of execution of the said MOU.
15. During proceeding dated 30.01.2024, the counsel for the complainant stated that by way of present complaint the complainants are seeking assured return in terms of MoU dated 10.04.2010 and addendum dated 26.12.2018. Further, submitted that the respondent had paid assured return upto December, 2018 and thereafter, the balance assured return is pending. On contrary the counsel for the respondent stated that the respondent promoter has "abandoned" the project and is willing to adjust the complainant in an alternate project in case the complainant so wishes.
16. In view of the above, the Authority vide order dated 30.01.2024 observed that the project comes under the definition of on-going project and has not been registered in violation of Section 3 of the Act, 2016. Further, the Authority directed the Planning branch to enquire into the matter including site visit and initiate Suo motu proceedings against the promoter, if violation of section 3 is prima facie found.
17. The requisite report was filed by the planning branch of the authority on 19.04.2024 wherein it is concluded as under:

"It is submitted that after going through the documents it is found that license no 185 of 2008 dated 29.10.2008 valid up to 28.10.2018 had been granted to M/s Orris Infrastructure Pvt. Ltd. for setting up of commercial



colony falling in the revenue estate of village Shikohpur, Sector - 82A, Gurugram and as per the records of the Authority the project was registerable under Section 3 of the Act *ibid* and the promoter had not registered the project with the Haryana Real Estate Regulatory Authority, Gurugram.

Accordingly, the Authority had initiated the *Suo-motu* for non-registration of the above said licensed area project and notice had been issued vide no. HARERA/GGM/2018/*Suo Motu*/Non-Reg./180 dated 22.11.2018 and RERA-GRG-6279-2019 dated 10.12.2019. On 20.01.2020, the Authority had imposed a penalty amounting Rs.30.48 crores on the promoter u/s 59(1) of the Act of 2016.

After that, the DTCP had granted the fresh license on the same parcel of land admeasuring 9.46875 acres vide no 82 of 2021 dated 18.10.2021 (after migration from license no 185 of 2008 dated 29.10.2008 granted for setting up of commercial colony) in favour of Cranes Developers Pvt. Ltd. in collaboration with Orris Infrastructure Pvt. Ltd. falling in the revenue estate of village Shikohpur, Sector - 82A, Gurugram (Annexure - "A") and the same licensed area had been registered with the Authority vide RC no 85 of 2021 dated 20.12.2021 valid up to 31.12.2024 (Annexure - "B").

M/s Orris Infrastructure Pvt. Ltd. had also filed a complaint in the High Court for the rectification of the orders passed by this Authority dated 20.01.2020. The Authority had passed the final order dated 27.02.2023 in which the application filed by applicant u/s 39 of the RERA Act, 2016 was dismissed by the Authority (Annexure - "C").

The same project has been inspected by the undersigned on 12.04.2024 and it is found that development work on the site is near about completion and services such as sewerage lines, storm lines, water supply, electrical work, street lighting, road work has been completed by the promoter.

From the above, it is concluded that, the *Suo motu* proceedings was already initiated by the Authority vide no RERA-GRG-6279-2019 dated 10.12.2019 for the violation of section 3 of the Act, 2016 against the promoter i.e., M/s Orris Infrastructure Pvt. Ltd. and the same was concluded by the Authority on 27.02.2023 and the last detailed order passed by the Hon'ble Authority is attached as Annexure - "C".

18. The complainants are seeking possession of subject unit. As per the above inspection report it is evident that the DTCP had granted the fresh license on the same parcel of land admeasuring 9.46875 acres vide no. 82 of 2021 dated 18.10.2021 (after migration from license no. 185 of 2008 dated 29.10.2008 granted for setting up of commercial colony) in favour of Cranes Developers

Pvt. Ltd. in collaboration with Orris Infrastructure Pvt. Ltd. and it can be stated that the respondent is not developing the project "Orris Business Square".

19. Keeping in view the aforesaid facts, the respondent is obligated to provide an alternate similarly situated unit to the complainants in accordance with the specifications of original MoU dated 10.04.2010 at the same rate at which the unit was earlier purchased and on a similarly situated location.
20. The complainants have also sought relief w.r.t payment of Rs.10,88,640/- (after TDS) towards assured returns for the period 01.01.2019 to 31.12.2021 along with 12% interest, and further interest at 24% p.a. for delay in handing over possession of the originally booked unit.
21. From the inspection report dated 19.04.2024 it is undisputed that the project "Orris Business Square" in its original form is no longer being developed by the respondent as elaborated above.
22. Since the assured return and delay interest were promised till completion of the original unit, which is not being developed, the Authority is of the considered view that reliefs for the assured return and delay period interest cannot be granted in the present circumstances. However, the complainants are at liberty to seek compensation under Section 18(3) of the Act, 2016 due failure of the respondent to discharge its obligations as per the terms and conditions of the MoU dated 10.04.2010.

G.IV Direct the respondent to pay Rs.50,000/- to the complainants as cost of present litigation.

23. The complainants are seeking relief w.r.t litigation expense. ***Hon'ble Supreme Court of India*** in case titled ***as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & rs. 2021-2022(1) RCR (C), 357*** held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by



the adjudicating officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

H.Directions of the Authority.

24. 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) of the Act:

- i. The respondent is directed to offer a similarly situated unit to the complainants as per specifications of original MoU dated 10.04.2010 at the same rate and to hand over the possession within a period of 90 days from the date of this order.

25. Complaint as well as applications, if any, stand disposed off accordingly.

26. File be consigned to registry.

(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Arun Kumar)

Chairman

Date: 29.07.2025