

**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM****Date of Order:****04.09.2025**

NAME OF THE BUILDER		K S PROPMART PRIVATE LIMITED	
PROJECT NAME		"PARK STREET"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/3896/2024	Paramjeet Kaur V/S K S Propmart Private Limited	Sh. Rahul Advocate for complainant Sh. Jagdeep Yadav Advocate for respondent
2.	CR/3906/2024	Paramjeet Kaur V/S K S Propmart Private Limited	Sh. Rahul Advocate for complainant Sh. Jagdeep Yadav Advocate for respondent
3.	CR/3908/2024	Astha Mahajan V/S K S Propmart Private Limited	Sh. Rahul Advocate for complainant Sh. Jagdeep Yadav Advocate for respondent

**CORAM:**

Shri Vijay Kumar Goyal

**Member****ORDER**

1. This order shall dispose of all the complaints titled as above filed before this authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

*A*

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Park Street" (Commercial Colony) being developed by the same respondent/promoter i.e., M/s K S Propmart Private Limited. The terms and conditions of the memorandum of understanding, fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking handing over of possession, assured return/lease rental along with interest and other.
3. The details of the complaints, reply to status, unit no., date of MOU, due date of possession, total sale consideration, total paid amount and relief sought are given in the table below:

Project Name and Location		K S Propmart Private Limited at "Park Street" situated in Sector- 85, Gurugram.	
Assured Return/lease rental Clause			
3. Lease Rental			
3.1.1Pre-Possession lease rental: The developer/ third party would pay to the allottee pre-possession lease rental for a period of 03 years with effect from 23.12.2022 till 22.12.2025 at the rate of Rs.78/- per sq. ft., subject to timely receipt of all payments as per demands raised by the developer from time to time as per the payment schedule.			
3.1.2Post-Possession lease rental: After possession, subject to timely receipt of all payments including possession charges as per the demand raised by the developer from the allottee from time to time, the developer/third party would pay to the allottee the monthly lease rental @Rs.52/- per sq. ft. for a period of 1 year or till the signing of tenancy agreement, whichever is earlier.			
Occupation certificate: Not obtained			
Complaint No. & Case Title	CR/3896/2024 Paramjeet Kaur V/S K S Propmart Private Limited	CR/3906/2024 Paramjeet Kaur V/S K S Propmart Private Limited	CR/3908/2024 Astha Mahajan V/S K S Propmart Private Limited
Reply status	15.01.2025	31.01.2025	31.01.2025





Unit no.	SH-44, 2 <sup>nd</sup> floor (Retail Unit) [ As per page no. 20 of the complaint]	SH-03, 3 <sup>rd</sup> floor (Retail Unit) [ As per page no. 23 of the complaint]	SH-10, 3 <sup>rd</sup> floor (Retail Unit) [ As per page no. 23 of the complaint]
Area admeasuring	166.08195 sq. ft. (Carpet area) and 370.71 sq. ft. (Super area) (As per page no. 21 of the complaint)	171.71 sq. ft. (Carpet area) and 746.59 sq. ft. (Super area) (As per page no. 23 of the complaint)	165.715 sq. ft. (Carpet area) and 720.50 sq. ft. (Super area) (As per page no. 23 of the complaint)
Date of MOU	26.12.2022 (As per page no. 54 of the complaint)	18.10.2022 (As per page no. 56 of the complaint)	26.12.2022 (As per page no. 54 of the complaint)
Date of agreement for sale	26.12.2022 (As per page no. 16 of the complaint)	18.10.2022 (As per page no. 18 of the complaint)	26.12.2022 (As per page no. 16 of the complaint)
Due date of handing over of possession	26.05.2028 (Note: Due date to be calculated 60 months from the date of execution of agreement i.e., 26.12.2022 plus grace period of 5 months)	18.03.2028 (Note: Due date to be calculated 60 months from the date of execution of agreement i.e., 18.10.2022 plus grace period of 5 months)	26.05.2028 (Note: Due date to be calculated 60 months from the date of execution of agreement i.e., 26.12.2022 plus grace period of 5 months)
Offer of possession	Not offered	Not offered	Not offered
Total Consideration	TSC: Rs.22,18,719/- including EDC/IDC of Rs.2,18,719/-) (As per page no. 71 of the complaint)	TSC: Rs.20,45,657/- (including EDC/IDC of Rs.4,40,488/-) (As per page no. 72 of the complaint)	TSC: Rs.18,66,095/- (including EDC/IDC of Rs.4,25,095/-) (As per page no. 73 of the complaint)
Total Amount paid by the complainant(s)	AP: Rs.22,40,000/- (including GST of Rs.2,40,000/-) (As per page no. 2 of the reply)	AP: Rs.16,72,362/- (including GST of Rs.1,79,182/-) (As per page no. 5 of the reply)	AP: Rs.16,13,920/- (including GST of Rs.1,72,920/-) (As per page no. 2 of the reply)
<p><b>The complainants in the above complaint(s) have sought the following reliefs:</b></p> <ol style="list-style-type: none"> <li>1. Direct the respondent to pay the pending assured return/lease rental for 15 months amounting to Rs.3,90,360/.</li> <li>2. Direct the respondent to pay Rs.30,000/- to the complainant towards litigation cost.</li> <li>3. Direct the respondent to waive off any maintenance charges, cost of parking or any other charges that the respondent may have charged since the respondent has not offered possession till date.</li> </ol> <p><b>Note: In the table referred above, certain abbreviations have been used. They are elaborated as follows:</b></p> <p><b>Abbreviation Full form</b></p>			

**TSC** Total Sale consideration  
**AP** Amount paid by the allottee(s)

4. The aforesaid complaints were filed against the promoter on account of violation of the MOU against the allotment of units in the project of the respondent/builder and for not handing over the possession by the due date, seeking award of possession along with assured return/lease rental as per clause 3 of the MOU.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case ***CR/3896/2024 titled as Paramjeet Kaur V/S K S Propmart Private Limited*** are being taken into consideration for determining the rights of the allottee(s) qua assured return/lease rental along with interest and others.

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

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

S. No.	Particulars	Details
1.	Name of the project	"Park Street", Sector 85, Gurugram
2.	Area of project	2.85 acres
3.	Nature of project	Commercial
4.	DTCP license no. and validity	100 of 2013 dated 02.12.2013 valid up to 01.12.2019



5.	Name of licensee	KS Propmart Pvt. Ltd.
6.	RERA registration and validity	41 of 219 dated 30.07.2019 valid up to 30.06.2022
7.	Extension of RERA registration	Extension no. 07 of 2023 dated 10.04.2023 valid up to 30.06.2023
8.	Unit and floor no.	S-44 & Second floor(Retail unit) (As per page no. 20 of the complaint)
9.	Area admeasuring	166.08195 sq. ft. (Carpet area) and 370.71 sq. ft. (Super area) (As per page no. 21 of the complaint)
10.	Allotment letter	22.12.2022 (As per page no. 71 of the complaint)
11.	Date of execution of memorandum of understanding	26.12.2022 (As per page no. 54 of the complaint)
12.	Date of execution of agreement for sale	26.12.2022 (As per page no. 16 of the complaint)
13.	Total sale consideration	Rs.22,40,000/- (As per consolidated receipt on page no. 69 of the complaint)
14.	Amount paid by the complainant	Rs.22,40,000/-(including GST of Rs.2,40,000/-) (As per page no. 2 of the reply)
15.	Assured return/lease rental clause	<p><b>3. Lease Rental</b></p> <p><b>3.1.1 Pre-Possession lease rental:</b> The developer/ third party would pay to the allottee pre-possession lease rental for a period of 03 years with effect from 23.12.2022 till 22.12.2025 at the rate of Rs.78/- per sq. ft. per month subject to timely receipt of all payments as per the demand raised by the developer from time to time or as per the payment schedule.</p> <p><b>3.1.2 Post-Possession lease rental:</b> After possession, subject to timely receipt of all payments including possession charges as per the demand raised by</p>

		<p><i>the developer from the allottee from time to time, the developer/third party would pay to the allottee the monthly lease rental @Rs.52/- per sq. ft. for a period of 1 year or till the signing of tenancy agreement, whichever is earlier.</i></p> <p>(As per page no. 60 of the complaint)</p>
16.	Possession clause	<p><b>7. Possession of the unit for Commercial Usage</b></p> <p><b>7.1 Schedule for possession of the said unit for commercial usage:</b> The promoter agrees and understands that timely delivery of possession of the unit for commercial usage along with parking (if applicable) to the Allottee(s) and the common areas to the association of allottees or the competent authority within a period of 60 months with additional grace period of 5 months from the date of execution of this agreement subject to such extension as may be permitted by terms and conditions of this agreement.....</p> <p>(As per page no.27 of the complaint)</p>
17.	Due date of possession	<p>26.05.2028</p> <p>(<b>Note:</b> due date to be calculated 60 months from the date of execution of agreement i.e., 26.12.2022 plus grace period of 5 months)</p>
18.	Occupation certificate	Not obtained
19.	Offer of possession	Not offered

### B. Facts of the complaint:

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

1. That the complainant is a law-abiding citizen of India. The complainant being aggrieved by the acts and omissions of the





respondent is filing the present complaint before this Hon'ble Authority against the respondent herein.

- II. That the complainant received a marketing call from the office of the respondent and the caller represented himself as the marketing manager of the respondent company. The complainant visited the project site and consulted with the office bearers of the respondent. The office bearers again represented that the respondent shall pay the monthly assured return/lease rental per month.
- III. That the complainant trusted the representations made by the builders and booked the said unit in the aforesaid project on the basis of assurances given by the respondent.
- IV. That an application for the allotment was submitted along with the payment of Rs.18,00,000/- by the complainant on 22.12.2022, the complainant booked a commercial unit being no. S-44, retail, 2<sup>nd</sup> floor, having a super area admeasuring 370.71 sq. ft., in the commercial project of the respondent known as "Park Street" situated at Sector- 85, Gurugram by signing a builder buyer's agreement on 26.12.2022.
- V. That the respondent then executed a MoU on 26.12.2022 and stated in Article 1 of the MoU regarding allotment of unit in retail block. The complainant was purchaser of the commercial unit and there were conditions of lease rentals as per Article-3 of MoU. As per Article3 of the MoU, the respondent agreed to pay for pre- possession lease rental but the same has been stopped after paying an amount of Rs.1,11,650/-.
- VI. That the respondent send a letter to the complainant on 25.03.2023 for adjustment of outstanding amount for the period from February,

2023 to May, 2023 along with interest @ 6% p.a. but still the respondent did not give a single penny.

- VII. That the respondent raised a demand for payment of EDC/IDC for the aforesaid commercial unit and the same is illegal at this stage before possession of the unit.
- VIII. That the complainant had again and again requested the respondent to clear the pending assured return/lease rental as she had put her lifelong savings in buying the aforesaid unit with the intention of becoming the absolute owner of a world-class property in Gurugram as promised by the respondent.
- IX. That monthly assured return/lease rental of 15 months is due which amounts to a total of Rs.3,90,360/- after deduction of TDS.
- X. That the complainant had again requested the respondent to pay monthly assured return to the complainant in accordance with the said MoU and had put multiple efforts and approached the respondent for the same, but all the efforts made by the complainant went in vain as after receiving money from the complainant, the respondent started ignoring the complainant and the respondent has not paid monthly assured return/lease rental to the complainant for 15 months causing immense mental trauma and financial loss to the complainant.
- XI. That the main grievance of the complainant in the present complaint is that despite the complainant having paid 100% of amount as per the payment schedule in BBA, the respondent has not paid assured return/lease rental as promised by MoU.
- XII. That there is a clear unfair trade practice and breach of contract and deficiency in the service of the respondent. The complainant does not



want to withdraw from the project. The promoter has not fulfilled his obligation as per the terms of the agreement executed between the parties.

- XIII. That taking advantage of its dominant position in the real estate market, the respondent has clearly refused to pay any pending and/or forthcoming monthly assured return/lease rental to the complainant leaving the complainant with no other option but to approach the Hon'ble Authority.

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

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

- i. Direct the respondent to pay approximately Rs.3,90,360/- (after TDS) for 15 month with the interest and in further timely pay par month assured return/lease rental.
- ii. Direct the respondent to pay an additional amount of Rs.30,000/ to the complainant towards litigation cost.
- iii. Direct the respondent to waive off any maintenance charges, cost of parking, EDC/IDC or any other charges that the respondent may have charged since the respondent has not offered possession till date.

10. 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:**

11. The respondent has contested the complaint on the following grounds:

- i. That the complainant made an application for provisional allotment of a unit bearing no. SH-44 located on second floor in the project

developed by the respondent known as "VSR 85 Avenue" which is now known as "Park Street" vide an application form.

- ii. That one of the offers made by the respondent at that point of time was that the respondent will pay an assured return/lease rental at the rate of Rs.78/- per sq. ft. of the super area from 23.12.2022 till 22.12.2025 subject to force majeure conditions and other conditions mentioned in the MOU. That the complainant accordingly entered into an MOU dated 26.12.2022 with the respondent determining all the rights and liabilities of the parties.
- iii. That as per MOU, the price of the unit for an area admeasuring 370.71 sq. ft. was Rs.20,00,000/- exclusive of EDC, IDC, Interest Free Maintenance Security (IFMS), Electricity Connection Charges, Power Back up charges, Air Conditioning Charges, service tax and such other levies/cessess/VAT as may be imposed by the any statutory authority.
- iv. That the complainant has made payment of Rs.22,40,000/- including GST of Rs.2,40,000/- to the respondent at the time of allotment. However, in addition to the above additional cost the complainant is also supposed to make other payments in the nature of EDC, IDC, Interest Free Maintenance Security (IFMS), Electricity Connection Charges, Power Back up charges, Air Conditioning Charges, service tax and such other levies/cessess /VAT as per the demands raised by the respondent.
- v. That as per the terms of the MOU, it was also agreed that the respondent will pay an assured return/lease rental at the rate of Rs.78/- per sq. ft. of the super area from 23.12.2022 till 22.12.2025. However, the payment of assured return/lease rental was subject to



force majeure clause as provided under clause 6.1 of the MOU and other clauses of the MOU. It is submitted that an amount of Rs.1,24,057/- for the period from 23.12.2022 to 30.04.2023 has been paid by the respondent as an assured return/lease rental to the complainant.

- vi. That without prejudice to the above, it is stated that the statement of objects and reasons of the said Act clearly state that the RERA is enacted for effective consumer protection. RERA is not enacted to protect the interest of investors. As the said Act has not defined the term consumer, therefore the definition of "Consumer" as provided under the Consumer Protection Act, 1986 has to be referred for adjudication of the present complaint. The complainant is an investor and not a consumer.
- vii. That the complainant was entitled to assured return/lease rental subject to force majeure conditions in developing the said project. It is submitted that the construction and development of the project was affected due to force majeure conditions and the same are enumerated herein below:
  - a. Shortage of labour
  - b. Increase in the cost of construction to a great extent.
  - c. Moreover due to active implementation of social schemes like National Rural Employment Guarantee and Jawaharlal Nehru National Urban Renewal Mission, there was also more employment available for labours at their hometown despite the fact that the NCR region was itself facing a huge demand for labour to complete the projects.

- d. That the Ministry of Environment and Forest and the Ministry of Mines had imposed certain restrictions which resulted in a drastic reduction in the availability of bricks and availability of sand which is the most basic ingredient of construction activity. That said ministries had barred excavation of topsoil for manufacture of bricks and further directed that no more manufacturing of bricks be done within a radius of 50 km from coal and lignite-based thermal power plants without mixing 25% of ash with soil.
- e. That shortage of bricks in region has been continuing ever since and the respondent had to wait many months after placing order with concerned manufacturer who in fact also could not deliver on time resulting in a huge delay in project.
- f. That same further cost huge delay in project and stalling various parts and agencies at work in advanced stages, for now the respondent had to redo, the said work causing huge financial burden on respondent, which has never been transferred to complainant or any other customers of project.
- g. That in addition to that the Government has declared demonetization on 08.11.2016 which severely impacted the operations and project execution on the site as the labourers in absence of having bank accounts were only being paid via cash by the sub-contractors of the company and on the declaration of the demonetization, there was a huge chaos which ensued and resulted in the labourers not accepting demonetized currency after demonetization.



- h. That in July 2017 the Government of India further introduced a new regime of taxation under the Goods and Service Tax which further created chaos and confusion owing to lack of clarity in its implementation. That ever since July 2017 since all the materials required for the project of the company were to be taxed under the new regime it was an uphill task of the vendors of building material along with all other necessary materials required for construction of the project wherein the auditors and CA's across the country were advising everyone to wait for clarities to be issued on various unclear subjects of this new regime of taxation which further resulted in delays of procurement of materials required for the completion of the project.
- i. That further the construction has also been delayed due to the Covid-19 pandemic which kicked start in March 2020 and is still ongoing.
- viii. That the complainant in the present case is seeking relief of assured return/lease rental as per the MOU signed between the parties. That as per Act of 2016 complaint can be filed only under Section 12, 14, 18 & 19 for any violation. However, the complainant has failed to plead any violation under Section 12, 14, 18 & 19 and thus the present complaint needs to be dismissed.
- ix. That the complainant is praying for the relief of "Assured Return/lease rental" which is beyond the jurisdiction of the Authority. The compensation for assured return/lease rental and other relief, if any cannot be awarded by the Hon'ble Authority, as the Authority does not have the jurisdiction to award any reliefs qua

assured return/lease rental as provided under section 18 of the Act and in accordance with the rules, framed there under.

- x. That the enforcement of memorandum of understanding entered into between the parties on the same date with regard to assured return/lease rental before and after offer of possession is a matter of civil nature, only to be dealt with by a civil court/ consumer court as the case may be.
12. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority:**

13. 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**

14. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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**

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



**Section 11.....**

(4) The promoter shall-

(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.

16. 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 objections raised by the respondent:****F.I Objection regarding the complainant being investor.**

17. The respondent has taken a stand that the complainant is the investor and not consumer. Therefore, she is not entitled to the protection of the Act and is not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumer of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter 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 documents

placed on record, it is revealed that the complainant is buyer and paid total price of Rs.22,40,000/- to the promoter towards purchase of a 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;"*

18. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment application for allotment, it is crystal clear that the complainant is allottee as the subject unit was allotted to her 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". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred to in the Act. Thus, the contention of the promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

**F.II Objection regarding force majeure conditions:**

19. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as demonetisation, certain environment restrictions, weather conditions in NCR region, shortage of labour, increase in cost of construction material, and





implementation of GST and major spread of Covid-19 across worldwide. However, all the pleas advanced in this regard are devoid of merit. Further, the Authority has gone through the possession clause and observed that due date for possession is 26.05.2028. The respondent has issued an allotment letter on 22.12.2022 which means that the respondent was well aware of the force majeure conditions due to outbreak of Covid-19 pandemic while launching the project and the promoter is required to take the same into consideration while launching the project. Thus, the promoter respondent cannot be given any leniency on basis of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong.

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

**G.1 Direct the respondent to pay approximately Rs.3,90,360/- (after TDS) for 15 month with the interest and in further timely pay par month assured return/pre-possession lease rental.**

20. The complainant is seeking the relief of unpaid assured return/pre-possession lease rental on monthly basis as per clause 3.1.1 of the MOU dated 26.12.2022 at the rates mentioned therein. It is pleaded by the complainant that the respondent has not complied with the terms and conditions of the said MoU. Though for some time, the amount of assured return/pre-possession lease rental was paid but later on, the respondent refused to pay the same. In **Gaurav Kaushik and anr. Vs. Vatika Ltd.** the authority has held that when the payment of assured return/pre-possession lease rental is part and parcel of memorandum of understanding or buyer's agreement (maybe there is a clause in that document or by way of addendum or terms and conditions of the allotment of a unit), then the promoter is liable to pay that amount as agreed upon.

21. A memorandum of understanding was executed between the complainant and the respondent on 26.12.2022 by which a specific unit bearing no. SH-44 has been allotted to the complainant for sale consideration of Rs.22,18,719/-. As per clause 3.1.1 of the MOU, the respondent has promised an amount of Rs.78/- per sq. ft. of super area per month in the form of assured return/pre-possession lease rental from 23.12.2022 till 22.12.2025. The definition of "allottee" as per section 2(d) of the Act of 2016 provides that an allottee includes a person to whom a plot, apartment or building has been allotted, sold or otherwise transferred by the promoter. Section 2(d) of the Act of 2016 has been reproduced for ready reference:

**2(d)**

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

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

22. The money was taken by the promoter as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the promoter promised certain amount by way of assured return/pre-possession lease rental 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.

23. The promoter is liable to pay that amount as agreed upon. Moreover, an agreement/MoU defines the builder-buyer relationship. In the present complainant both the agreement for sale and memorandum of



understanding was signed on the same date i.e., 26.12.2022 and clause 6.3 of the MOU clearly states that both the parties shall be bound by the terms of this MOU and the agreement for sale and also the provisions of this MOU shall be subject to the agreement for sale to be executed between the allottee and the developer. So, it can be said that the agreement for assured return/pre-possession lease rental between the promoter and allottee arises out of the same relationship and is marked by the said memorandum of understanding.

24. In the present complaint, the assured return/pre-possession lease rental was payable as per clause 3 of MoU, which is reproduced below for the ready reference:

**3. Lease Rental**

**3.1.1 Pre-Possession Lease Rental:**

*The developer/ third party would pay to the allottee pre-possession lease rental for a period of 03 years with effect from 23.12.2022 till 22.12.2025 at the rate of Rs.78/- per sq. ft., subject to timely receipt of all payments as per demands raised by the developer from time to time as per the payment schedule.*

**(Emphasis supplied)**

Thus, the assured return/pre-possession lease rental was payable @ Rs.78/- per sq. ft. of super area per month w.e.f. 23.12.2022 till 22.12.2025.

25. In light of the reasons mentioned above, the authority is of the view that as per the MoU dated 26.12.2022, it was obligation on the part of the respondent to pay the assured return/pre-possession lease rental. It is necessary to mention here that the respondent has failed to fulfil its obligation as agreed inter se both the parties in MoU dated 26.12.2022. Accordingly, in the interest of natural justice, the liability of the respondent to pay assured return/pre-possession lease rental as per MoU is still continuing. The respondent has paid assured return/lease rental to the complainant till April, 2023 amounting to Rs.1,24,057/-. Therefore,

considering the facts of the present case, the respondent is directed to pay the amount of assured return/pre-possession lease rental in terms of clause 3 of MoU dated 26.12.2022 at the agreed rate i.e., @ Rs.78/- per sq. ft. of super area per month from the date the payment of assured return/pre-possession lease rental has not been paid i.e., May, 2023 till 22.12.2025.

**G.II Direct the respondent to pay an additional amount of Rs.30,000/- to the complainant towards litigation cost.**

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

**G.III Direct the respondent to waive off any maintenance charges, cost of parking or any other charges that the respondent may have charged since the respondent has not offered possession till date.**

27. The Authority after carefully considering the submissions presented by the complainant, finds that the complainant has failed to substantiate her claims with any documentary evidence and it has not been pressed during the proceedings by the counsel for the complainant. In the absence of such material proof, the Authority is unable to ascertain the legitimacy of the complainant's concerns about the claimed reliefs. Thus, no direction to this effect.

**H. Directions of the Authority:**



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

- i. The respondent/promoter is directed to pay the assured return/pre-possession lease rental at the rate i.e., Rs.78/- per sq. ft. of super area per month as per agreed terms of MoU from the date i.e., 23.12.2022 till 22.12.2025 after deduction of amount already paid in lieu of assured return/lease rental.
- ii. The respondent is directed to pay arrears of accrued assured return/pre-possession lease rental as per MoU dated 26.12.2022 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 @8.85 % p.a. till the date of actual realization.

29. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

30. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.

31. Files be consigned to registry.

  
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 04.09.2025