

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

**Complaint no.:** 781 of 2024  
**Date of filing of complaint:** 26.02.2024  
**Date of Order:** 18.09.2025

Pulkit Katyal  
**R/o:** - C-347, Ground Floor, Surya Nagar, Amar  
Park, Ghaziabad, Uttar Pradesh-201011

**Complainant**

Versus

M/s KS Propmart Private Limited.  
**Regd. office at:** A-22, Hill View Apartments, Vasant  
Vihar, New Delhi-110057  
**Corporate office at:** Plot No. 14, Ground Floor,  
Sector- 44, Institutional Area, Gurugram- 122003  
Haryana

**Respondent**

**CORAM:**  
Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**  
Shri Manoj Shukla  
Shri Jagdeep Yadav

Complainant  
Respondent

**ORDER**

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

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thereunder or to the allottee as per the agreement for sale executed *inter se*.

### A. Unit and project related details

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

S. No.	Particulars	Details
1.	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.	Unit and floor no.	12, 7 <sup>th</sup> floor (As per page no. 26 of complaint)
7.	Area admeasuring	1500 sq. ft. (Super area) (As per page no. 26 of complaint)
8.	Date of execution of memorandum of understanding	27.11.2018 (As per page no. 24 of the complaint)
9.	Total sale consideration	Rs.53,85,000/- (including EDC of Rs.8,85,000/-) (As per SOA dated 09.07.2024 on page no. 58 of the reply)
10.	Amount paid by the complainant	Rs.21,05,000/- (As alleged by the complainant on page no. 7 of the complaint) Rs.32,80,004/- (As per bank details provided by the complainant during proceedings dated 18.09.2025 ) (Note: This does not have any bearing since assured return is to be paid per sq. ft. on basis of the super area of the unit)
11.	Assured return clause	<b>3. Assured Return</b> 3.1 It is hereby agreed and undertaken by the developer that from 27 <sup>th</sup> November, 2018 till submission of application for grant of occupation certificate to the competent authority, the developer, shall pay to the allottee an assured return at the rate of Rs.42.75 /- per sq.

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		<i>ft. of super area of premises per month. After completion of construction till the first lease, the developer shall pay to the allottee(s) an assured return @ Rs.42.75/- per sq. ft. of super area of premises per month. The assured return shall be subject to tax deduction at source, which shall be payable on due date of every English Calender month on due basis. The developer agrees to lease this unit at a minimum lease rental of Rs.46.66/- per sq. ft. once the building is d for occupation.</i> (As per page no. 28 of the complaint)
12.	Date of execution of space buyer's agreement	Not executed
13.	Possession clause	<b>N.A</b>
14.	Due date of possession (As per <b><i>addendum to the MoU dated 27.11.2018</i></b> )	27.05.2022 <b>(Note:</b> Due date to be calculated 36 months from the date of execution of MOU i.e., 27.11.2018 plus 6 months grace period as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020)
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered
17.	Legal notice for payment of assured return	12.12.2023 (As per page no. 60 of the complaint)

### B. Facts of the complaint:

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

- I. That the complainant is a citizen of India and believes in Indian Constitution and abided by the law.
- II. That the complainant came to know about the project through one of his acquaintance and after the basic inquiry from the company then complainant was approached by the company officials there after complainant had booked a commercial/office property with the respondent.

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- III. That the complainant was allotted the unit no. 12, on 7th floor measuring 1500 sq. ft. in project "Park Street" of the respondent company which is situated at Sector 85, Gurugram for a total consideration of Rs.45,00,000/- under construction link plan for his own use on 27.11.2018 by signing MoU on the same day. The complainant was promised by the respondent to hand over the possession of furnished unit by 27.11.2021. The complainant has paid an amount of Rs.21,05,000/- (Rs.11,20,000/- on 27.11.2018 & 28.01.2024 then Rs.8,85,000/- on 01.06.2021 and again Rs.1,00,000/- on 26.06.2023) to the respondent against the sale consideration of Rs.45,00,000/-. That as per Article 3.1 of MoU, the respondent promised to pay assured return @Rs.42.75/- per sq. ft. of the super area of premises per month but till date only consideration of Rs.19,87,875/- i.e., for thirty-one months has been received and an amount of Rs.19,87,875/- i.e., for thirty-one months is due (A total of Sixty-two months has been passed since the date of MoU/agreement).
- IV. That payment of Rs.3,84,750/- was outstanding from April, 2020 to September, 2020 and then again from January, 2022 till date an amount of Rs.16,03,125/- is due (total outstanding dues amounting to Rs.19,87,875/-) and no payment has been made in respect of assured return as mentioned under Article 3 of the MoU.
- V. That the complainant purchased the property for commercial purpose and was in shock when he was informed that possession of the said property is still uncertain and the same wasn't completed before 27.11.2021, therefore the complainant informed the respondent but the respondent was seemingly not interested in entertaining any grievance and hence the possession of the said property is still due.

- VI. That on 24.06.2023, the complainant has paid Rs.1,00,000/- through two RTGS of Rs.50,000/- but later he found out the said promise of giving the possession by changing the original deed was a luring tactic and it was only a different way to extract money from the complainant which the respondent never wish to fulfil or honour.
- VII. That on 10.10.2023, the respondent has sent information regarding cancellation of booking (from mobile no. Mr. Anil Raj, Director) but no formal intimation was sent by the respondent till date to the complainant. Thereafter, the complainant has visited the office of the respondent multiple times to address this issue but no concrete or substantial progress could be achieved. Thereafter, there was a demand of Rs.1,00,000/- for changing the original booking no. 712 to other floor units as that property was ready for possession and the same could be delivered on time, on the other hand the original property 712 cannot be delivered due to incompleteness of project and uncertain timelines.
- VIII. That a legal notice was sent on 12.12.2023 via speed-post and the same was delivered on 26.12.2023 and via email on 13.12.2023 but no reply was received from defendant side.
- IX. That there is no option left with the complainant for claim except this Hon'ble Authority. Therefore, the complainant is hereby seeking possession of his property and his due lease rental up to till today.

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

4. The complainant has sought following relief(s):
- Direct the respondent to handover the possession of unit no. 712 to the complainant on immediate/priority basis.



- ii. Direct the respondent to pay arrears for 31 months @ Rs.64,125/- per month amounting to Rs.19,87,875/- along with interest @24% per annum.
  - iii. Direct the respondent to pay an amount of Rs.1,00,000/ to the complainant towards litigation expense.
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 has contested the complaint on the following grounds:
- i. That the complainant made an application for provisional allotment of a unit bearing no. 12 located on seventh 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 at the rate of Rs.42.75/- per sq. ft. of the super area from 27.11.2018 till the notice for the offer of possession subject to force majeure conditions and other conditions mentioned in the MOU. That the complainant accordingly entered into an MOU dated 27.11.2018 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 1500 sq. ft. was Rs.45,00,000/- 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.20,05,000/- including GST of Rs.1,20,000/- 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. Further, as per the annexed payment plan with MoU and application form, an amount of Rs.24,95,000/- plus interest is still pending.
- v. That as per the terms of the MOU, it was also agreed that the respondent will pay an assured return at the rate of Rs.42.75/- per sq. ft. of the super area from 27.11.2018 till the notice for the offer of possession. However, the payment of assured return was subject to force majeure clause as provided under clause 5.1 of the MOU and other clauses of the MOU. It is submitted that an amount of Rs.23,72,625/- for a period of 37 months has been paid by the respondent as an assured return to the complainant.
- vi. That the complainant was entitled to assured return 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:
- Shortage of labour
  - Increase in the cost of construction to a great extent.
  - 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.
- vii. That the complainant in the present case is seeking relief of assured return 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.
- viii. That the complainant is praying for the relief of "Assured Return " 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.

- ix. That the enforcement of memorandum of understanding entered into between the parties on the same date with regard to assured return/pre-possession 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.
7. 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:**

8. 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**

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**

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.

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

**F. Findings on objections raised by the respondent:**

**F.1 Objection regarding force majeure conditions:**

10. 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 application form and observed that due date for possession is 31.12.2021. **Further as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.** The authority put reliance judgment of Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020* dated 29.05.2020 which has observed that:

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*"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."*

11. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 27.11.2021 i.e., after 25.03.2020. Consequently, an extension of 6 months is to be given over on account of force majeure conditions due to outbreak of Covid-19 pandemic. Therefore, the due date of subject unit comes to 27.05.2022 and the events alleged by the respondent do not have any impact on the project being developed by the respondent. Moreover, some of the events mentioned above are of routine in nature happening annually 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 handover the possession of unit no. 712 to the complainant on immediate/priority basis.**

12. The complainant is seeking legal and complete offer of possession in terms of the MOU dated 27.11.2018. As per clause 2.1, the respondent is obligated to lease out the unit after issuing a valid offer of possession to the complainant. The relevant portion of the said clause is reproduced below for the ready reference:

**2. LEASE OF UNIT**

*2.1 That upon completion of the complex the developer issue offer of possession to the allottee and after payment of all dues as demanded by the developer, the developer shall find out a suitable lessee to lease the premises on such terms and conditions as may be determined by the developer. The allottee hereby authorizes developer to grant to any person (herein after referred as 'Lessee') on lease the unit and allottee shall not grant the unit on lease to any third party or deal otherwise with the unit without obtaining the written consent of developer.....*



13. In terms of the clause 2.1 of the MOU, the respondent is under an obligation to lease out the unit after making a valid offer of possession. The respondent has not obtained the occupation certificate till date.

14. Thus the respondent can offer the possession of the subject unit after obtaining occupation certificate from the competent Authority which is not yet obtained. Moreover there is no clause in the MoU regarding handing over of possession of the unit to the complainant, thus no direction to this effect.

**G.II Direct the respondent to pay arrears for 31 months @ Rs.64,125/- per month amounting to Rs.19,87,875/- along with interest @24% per annum.**

15. The complainant is seeking unpaid assured returns on monthly basis as per the MOU dated 27.11.2018 at the rates mentioned therein. It is pleaded by the complainant that the respondent has not complied with the terms and conditions of the said MoU. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same. In **Gaurav Kaushik and anr. Vs. Vatika Ltd.** the authority has held that when the payment of assured returns is part and parcel of memorandum of understanding or buyer's agreement (maybe there is a clause in that document or by way of addendum or terms and conditions of the allotment of a unit), then the promoter is liable to pay that amount as agreed upon.

16. A memorandum of understanding was executed between the complainant and the respondent on 27.11.2018 by which a specific unit bearing no. 12 on 7<sup>th</sup> floor has been allotted to the complainant for sale consideration of Rs.45,00,000/-. Although, there is no specific due date for handing over of possession is given in the MOU but as per clause 3.1 of the MOU, the respondent has promised an amount of Rs.42.75/- per sq. ft. of super area per month in the form of assured return till the offer of possession. The

definition of "allottee" as per section 2(d) of the Act of 2016 provides that an allottee includes a person to whom a plot, apartment or building has been allotted, sold or otherwise transferred by the promoter. Section 2(d) of the Act of 2016 has been reproduced for ready reference:

**2(d)**

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

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

17. The money was taken by the promoter as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the promoter promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.
18. The promoter is liable to pay that amount as agreed upon. Moreover, an agreement/MoU defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the said memorandum of understanding.
19. In the present complaint, the assured return was payable as per clause 3 of MoU, which is reproduced below for the ready reference:

**3. Assured Return**

- 3.1 *It is hereby agreed and undertaken by the developer that from 27<sup>th</sup> November, 2018 till submission of application for grant of occupation certificate to the competent authority, the developer, shall pay to the allottee an assured return at the rate of Rs.42.75 /- per sq. ft. of super area of premises per month. After completion of construction till the first lease, the developer*





*shall pay to the allottee(s) an assured return @ Rs.42.75/- per sq. ft. of super area of premises per month. The assured return shall be subject to tax deduction at source, which shall be payable on due date of every English Calender month on due basis. The developer agrees to lease this unit at a minimum lease rental of Rs.46.66/- per sq. ft. once the building is ready for occupation.*

20. Thus, the assured return was payable @ Rs.42.75/- per sq. ft. of super area per month w.e.f. 27.11.2018, till submission of application for grant of occupation certificate to the competent authority.
21. On consideration of documents available on record and submissions made by the parties, it is observed that the assured return to the tune of Rs.42.75/- per sq. ft. of super area per month w.e.f. 27.11.2018 till submission of application for grant of occupation certificate to the competent authority. That initially the respondent was paying the monthly assured return to the complainant till March 2020 and then from October, 2020 to December, 2021 but stopped paying assured return thereafter. However, the payment of assured return was subject to force majeure clause as provided under clause 5.1 of the MOU and other clauses of the MOU.
22. The Authority while going by the facts of the case is of the view that till date neither the project is completed nor the respondent has not applied for occupation certificate to the competent Authority. Moreover the clause 3 of MOU is to read with clause 5.1 of the MOU which talks about force majeure circumstances and Covid-19 is covered under that. The due date in the present case as per addendum to the MoU dated 27.11.2018 is to be calculated 36months from the date of execution of MoU which comes to 27.11.2021. The Authority vide its **notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020**. As the due date in the present case is 27.11.2021 i.e., after 25.03.2020, therefore grace period of



6 months is allowed. Keeping in view the above-mentioned facts and clause 3 read with clause 5.1 of MoU, the respondent has been granted an exemption for 6 months for the payment of assured return to the complainant. In the present case, the respondent has not applied for occupation certificate, thus the complainant is entitled for assured return till the application for occupation certificate is made in terms of above clause.

**G.III Direct the respondent to pay an amount of Rs.1,00,000/ to the complainant towards litigation expense.**

23. 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.

**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):
- The respondent/promoter is directed to pay the assured return at the rate i.e., Rs.42.75/- per sq. ft. of super area per month as per agreed terms of MoU from the date i.e., 27.11.2018 till offer of possession after obtaining the occupation certificate after deduction of amount already paid in lieu of assured return.



- ii. The respondent is directed to pay arrears of accrued assured return as per MoU dated 27.11.2018 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.
- iii. The complainant is directed to pay outstanding dues, if any remains after adjustment of payable assured returns, the respondent shall offer the possession of the allotted unit after obtaining occupation certificate and execute conveyance deed in next 90 days.

25. Complaint stand disposed of.

26. File be consigned to registry.

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 18.09.2025