

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

Complaint no. : 1603 of 2022
Date of filing: 06.04.2022
Date of decision : 16.09.2025

Akshay Gandhi

Regd. Address at: U 28/12 DLF Phase III
Gurugram

Complainant

Versus

M/s VSR Infratech Pvt. Ltd.

Regd. office: A-22, Hill View Apartments,
Vasant Vihar New Delhi-110057

Respondent

CORAM:

Shri Arun Kumar
Shri. Vijay Kumar Goyal

**Chairperson
Member**

APPEARANCE:

Shri Nitish Kush and Ms. Vandana
(Advocate)
Ms. Shriya Takkar (Advocate)

Counsel for Complainant

Counsel for Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"114 Avenue", Sector 114, Gurugram, Haryana
2.	Project area	2.968 acres
3.	Nature of the project	Commercial Colony
4.	DTCP license no. and validity status	72 of 2011 dated 27.07.2011 valid up to 20.07.2024
5.	Name of licensee	AMD Estate & Developers Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. 53 of 2019 dated 30.09.2019
7.	Application form	302 dated 08.03.2013
8.	Shop no. & Area	G-52, Ground floor, 779.74 sq. ft. (super area) (Page no. 14 & 30 of complaint)
9.	Date of MOU	04.05.2013 (page 12 of complaint)
10.	BBA	Not Executed
11.	Assured return Clause	<p>3.1 Till the notice for offer of possession is issued, the Developer, shall pay to the Allottee an Assured Return at the rate of Rs. 145.23 per sq. ft. of super area. After completion of construction, till tenant is inducted possession is delivered to tenant and the lease commences and rental is received by the allottee from the tenant, the developer shall pay to the allottee(s) an Assured Return @ Rs. 133/- (Rupees One Hundred & thirty-three Only) per sq. ft. of super area of premises per month (hereinafter referred to as the 'Assured return'. The assured return shall be subject to tax deduction at source, which shall be payable on or before 7th day of every English Calendar month due basis.</p> <p>3.4.</p>

		<p><i>Developer shall continue to pay to the Allottee an Assured Return from the date of execution of this agreement till the first Lease Rent become payable to the Allottee from the Lessee. The security deposit received from the tenant shall also be passed on by the Developer to the Allottee in case same has been paid by the tenant to the Developer. The Developer shall not retain any part of the Security deposit.</i></p> <p><i>(page 18 & 19 of complaint)</i></p>
12.	Date of start of construction	Not provided
13.	Total sale consideration	Rs.1,12,82,838/- (page 16 of complaint)
14.	Amount paid by the complainants	Rs.1,05,31,084/- (page 16 & 17 of complaint)
	As per clause 1.3, allottee shall pay the remaining balance consideration to developer on the notice of offer of possession by the developer.	
15.	Due date of possession	04.05.2016 [3 years from date of MoU]
16.	Occupation certificate /Completion certificate	17.02.2021 (As per on page 154 of reply)
17.	Offer of possession	12.05.2021 (page 30 of complaint)
18.	Termination/ Cancellation letter	10.02.2022 (page 48 of complaint)
19.	Assured Return Paid	April 2014 to March 2017 Rs. 52,77,076/- (page 3 of documents filed on 01.04.2025)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - a. That the facts leading to filing of the present petition are that the petitioners applied for a shop in the upcoming project of the respondent namely, shop no. G-52 at the ground floor in the project called "114 Avenue" situated in Sector-114, Gurugram, and made an application no. 302 dated 08.03.2013 in that regard. It is submitted that the said project was advertised with tall claims and it was represented that the project

would be one of its kind in the vicinity and would yield good returns on the investment. It was also represented that there is an option of assured returns to be given to the investors till the offer of possession and also till the same is rented out by the allottees and, therefore, it is a win-win situation for the allottees, who would invest in the said project.

- b. That based on the representation made by the respondent, petitioners applied and were allotted the shop i.e. unit no. G-52 having a total area of 779.74 sq. ft. at ground floor for a total sale consideration of ₹1,12,82,838/-. That the petitioners paid an amount of ₹1,05,31,084/- from time to time towards part of sale consideration for the shop and in this regard, a memorandum of understanding dated 04.05.2013 was executed between the parties. The said consideration was recorded in clause 1.3 of the said agreement, which may be read as part and parcel of the said para. The balance consideration was to be paid to the respondent on the notice of offer of possession. That in the said agreement, the respondent agreed to pay assured returns on the shop from the date of the said agreement and till the date of offer of possession.
- c. That as per clause 1.4 of the said agreement, it was stipulated that in case the petitioners fail to make payment as per the payment plan, they shall be liable to pay interest @ 18% per annum from the due date for first 30 days of default and thereafter, the rate of interest will be 24% per annum. It was further stipulated that in case the petitioners fail to make payment of the balance sale consideration along with interest within the demand notice period, the respondent could terminate the said agreement and forfeit the earnest money within the period of 90 days. 25% of the total sale consideration was to be construed as earnest

money. That as per clause 3.1 of the said agreement, the respondent was obligated to pay to the petitioners an assured return.

- d. That the respondent in compliance of article 3 regarding the assured return started making payment to the petitioners and paid the petitioners assured return @ ₹145.23 per sq. ft till physical possession was offered to the complainants. It was further agreed that after the possession and till the time the shop is rented by the complainant, the respondent was to pay an assured return at the rate of ₹133/per sq. ft per month till tenant is inducted.
- e. That in compliance of the said stipulated terms & conditions regarding assured returns, the respondent paid the same only up to March 2016 and did not pay thereafter since the respondent stopped paying the assured return, the petitioners entered into correspondence with the respondent and requested the respondent to make payment of the assured return as per the said agreement.
- f. That the project was delayed and possession was not in sight and the respondent became liable to pay compensation to the petitioners in terms of clause refereed in assured advance of the said agreement. That eventually, the respondent offered possession of the shop vide communication dated 12th May 2021 received by an email dated 13.5.2021 from one M.s Radhika Sharma of the respondent. The petitioners thereafter inspected the shop and it was noticed that works were far from complete and documents such as Fire NOC/Completion Certificate, Occupation Certificate and all MEP commission were absent. In addition, a pillar of 2 sq. metres was constructed in the centre of the shop, leaving only corridor around thereby making the-space-totally non-usable and defeating the very purpose of the shop. This pillar has reduced the usable area drastically.

- g. That the aforesaid discrepancies in the shop were communicated by the petitioners to the respondent numerous times during various meetings held between the parties and more particularly in meetings held in the month of June. That while these discussions were going on and the petitioners were waiting for conclusive offer from the respondent, covid pandemic stuck the entire world and there was lockdown etc. therefore, nothing was heard from the respondent.
- h. That in terms of the space buyer's agreement dated 4 May 2013, the possession of the shop was to be handed over to us on or before 31 May 2015. However, the offer of possession that too a premature one, was made vide letter dated 12th May 2021. That on this issue of unpaid assured returns and the delay in payment of compensation, various meetings were held between the parties and it was discussed that an alternate Unit No.UG-33 or Unit UG 21 of identical area be allotted to the complainant and all dues pertaining to assured returns be paid as per agreed terms.
- i. That pursuant to the aforesaid discussions, the respondent did offer a shop number UG-21 but clubbed it with Shop number UG 20, where in complainants were required to pay the additional sums. The complainants expressed their concern and respondent assured to consider the concerns and come out with some solution.
- j. That while the complainants were waiting for the respondent to respond, the petitioners were shocked in February, 2022 to receive a communication titled "intimation of termination" dated 10.02.2022 from the respondent received on mail by which the respondent cancelled the application form, allotment letter, space buyer agreement and receipts in respect of the shop and also forfeited an amount of ₹17,04,470/-. It was stated in the said letter that since petitioners have

failed to clear the outstanding amounts allegedly to be ₹59,13,126/-, the respondent is taking the option to terminate the said agreement.

- k. That it may be noted that the offer of possession was dated 12th May 2021 and thereafter, there has been no communication from the respondent demanding any interest or any of the payments from the petitioners. This was clearly for the reason that discussions were going on and there were amounts recoverable from the respondent towards the assured returns as mentioned in the preceding paragraphs.
- l. Thus, in view of the aforesaid, an amount of ₹1,44,34,008/- was receivable by the petitioners from the respondent after adjusting the unpaid component of balance sale consideration, which was approximately ₹7,51,754/-. That in response to the said intimation of termination letter, the petitioners immediately issued a communication dated 1st March 2022, inter alia, pointing out the illegality and the arbitrariness of the respondent in issuing letter of termination for terminating the space buyer agreement and also demanded the balance assured returns and sought to discuss the matter for mutual and amicable resolution.
- m. That the petitioners have not heard anything from the respondent and in view of the letter dated 10.02.2022 terminating the space buyer agreement, the petitioners apprehend that the respondent would create third party interest, right and title in the shop, thereby prejudicing the rights of the petitioners in the shop. That it is the respectful submission on behalf of the complainant that the action of the respondent in terminating the space buyer's agreement after receiving a consideration of over ₹1 crore and not being there should return has agreed to the complainant, is an arbitrary exercise, illegal act and malicious. It is the respectful submission of the complainant that the as agreement in the

facts and circumstances of the case under no circumstances could have been cancelled.

- n. That in the termination letter issued by the respondent, the respondent has threatened to deal with the shop to the detriment the complainant and there is a clear possibility of the respondents creating third party interest in the shop on the basis of the cancellation letter. That it is respectful submission on behalf of the complainants that the respondents are obligated to hand over the vacant, peaceful, usable possession of the shop after completing all the necessary obligations and rectification of the deficiencies pointed by the complainants, to the complainants in terms of the agreement or in the alternative, an alternate shop of similar area is to be handed over by the respondents to the complainants. In case the respondents are not in a position to handover the possession of the shop or any alternate shop to the complainants, then the respondents are liable to refund the entire amount paid by the complainants along with interest at the rate of 18% per annum.
- o. That by not giving the possession of the shop in timely manner and failure of pay the assured returns in terms of the agreement, the respondents have violated the terms of the agreement and have also violated the provisions of RERA for which adequate compensation is to be awarded to the complainant and appropriate penalty is to be imposed on the respondents. That it is important an interim order be passed and stay the communication dated 10.02.2022 and the respondent and its agents, assigns, attorneys, successors be restrained from dealing with the shop in any manner whatsoever to the detriment of the interest of the complainant and not to act in pursuance of the letter dated 10.02.2022.

- p. That there are disputes, which emanate from the space buyer agreement on the issue of delayed possession, unpaid assured returns and, therefore, the letter dated 10.02.2022 is untenable and unsustainable in law and has to be set aside in accordance with law. It may be noted that for the issue of assured returns, the complainant's are pursuing their remedies under arbitration act for which they have already invoked the arbitration clause, contained in the said agreement, by its letter dated 1 March 2022.
- q. That in case the interim reliefs as sought for or not granted, the complainant shall suffer irreparable loss and injury. It is submitted that the balance of convenience lies in favour of the complainant in as much as the complainant's have paid substantial amount of consideration towards the purchase of the Shop.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- Direct the respondent to handover the possession of the shop no. 52 to the complainant in time bound manner.
 - Declare the termination dated 10.02.2022 as null and void.
 - Direct the respondent to pay delay possession charges as per RERA Act, 2016.
 - Direct the respondent to pay unpaid assured return along with interest.
 - Direct the respondent to pay ₹1,00,000/- to the complainant towards cost of 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 has contested the complaint on the following grounds.

- a. It is submitted that the Complainant made an application for provisional allotment of a commercial unit bearing no. G-52 Located on Lower Ground Floor in the project developed by the Respondent known as 114 Avenue (hereinafter referred to as the "Project") vide application dated 08.03.2013. That one of the offers made by the Respondent at that point of time was that the unit will have a benefit of assured return till the notice of offer of possession and thereafter shall have a benefit of assured return after completion of construction till the tenant is inducted possession is delivered to tenant subject to Force Majeure Conditions and other conditions mentioned in the MOU. That the Complainant accordingly entered into an MOU dated 04.05.2013 with the respondent determining all the rights and liabilities of the parties.
- b. That the total agreed consideration for allotment as per MOU is ₹1,12,82,838/- exclusive of IFMS, power back up charges, service tax and such other levies/cess/VAT as may be imposed by any statutory authority. That the complainants made payment of ₹1,05,31,084/- including service tax to the tune of ₹3,76,531/-. It is submitted that the Complainant was supposed to pay the remaining/balance consideration to the Respondent on the notice of offer of possession. It is submitted that the amount paid till date by the Complainant is ₹1,05,31,084/-.
- c. That it is pertinent to mention here that there was no time limit provided under the MOU for handing over the possession of the unit. Thus, time was not the essence of the contract for delivering the possession, however it was mutually agreed upon that the Complainant will be entitled to the benefit of assured returns as per the MOU.
- d. That the as per the terms of the MOU, it was also agreed that the Respondent will pay an assured return at the rate of ₹145.23/- per sq. ft. of the super area till the notice of offer of possession is issued and

assured return at the rate of ₹133/- per sq. ft. of super area after completion of construction , till the tenant is inducted possession is delivered to tenant and lease commences.

- e. That it is pertinent to mention here that the project in question was launched in the year 2010 and is right on the Dwarka expressway, which was supposed to be completed by the State of Haryana by the end of 2012. That the star purpose of launching the project and object of the Complaints buying the project was the connectivity of Dwarka expressway which was promised by the State Government to be completed in the year 2012. That it is reiterated that the only approach road to the project in this Dwarka Expressway which is still not complete and is likely to take another year or so. There being no approach road available it was initially not possible to make the heavy trucks carrying construction material to the project site and after a great difficulty and getting some kacha paths developed, materials could be supplied for the project to get completed which took a lot extra time. Even now the Govt has not developed and completed the basic infrastructure, despite the fact that EDC/IDC were both deposited with the State Government on time. That completion of Dwarka expressway which in turn affected the completion of the project in question was beyond the control of the Respondent. Thus, for just and fair adjudication of this complaint both State of Haryana and NHAI are necessary parties to the present proceedings for the purpose of causing the delay in the project and thus they are jointly and severally liable for the delay of the project and pay compensation to the Complainants.
- f. The Company has been facing the labor problem for last 3 years continuously which slowed down the overall progress of the project and in case the Company remains to face this problem in future, there is a

- probability of further delay of project. It took almost 9 months to resolve the issues with the contractor and to remobilize the site.
- g. The building plans were approved in January 2012 and the company had timely applied for environment clearances to competent authorities; we only got the environmental clearance certificate on 28.05.2013 i.e. almost after a period of 17 months from the date of approval of building plans.
- h. The typical design of fifth floor slab casting took a period of more than 6 months to design the shutting plans by structural engineer which hampered the overall progress of work. The infrastructure facilities are yet to be created by a competent authority in this sector which is also a reason for delay in overall project. The drainage, sewerage and other facility work has not yet commenced by competent authority.
- i. That sand which is used as a mixture along with cement for the same construction activity was also not available in the abundance as is required since mining Department imposed serious restrictions against manufacturing of sand from Aravali region.
- j. 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 complainants or any other customers of project. That in addition the current Govt. has on 8th Nov. 2016 declared demonetization which severely impacted the operations and project execution on the site.
- k. That the legislature passed a legislation titled as 'The Banning of Unregulated Deposit Schemes Act, 2019' (hereinafter referred to as "BUDS Act"), with the aim and objective to provide for a comprehensive mechanism to ban the unregulated deposit schemes, other than deposits

taken in the ordinary course of business, and to protect the interest of depositors and for matters connected therewith or incidental thereto. With the enactment of the BUDS Act, the investment return plan/assured return/assured rental linked fell within the ambit of "*deposit*" and "*Unregulated Deposit Scheme*" under the BUDS Act. Thus, in pursuant to the provisions of Section 3 of the BUDS Act, all the "*Unregulated Deposit Schemes*" were barred and all the deposit takers including the Respondent dealing in "*Unregulated Deposit Schemes*" were stopped from operating such schemes. It is further submitted that in terms of Clause 6.10 of the MOU and all such provisions of the said MOU were void, illegal and unenforceable under the BUDS Act. In view of the above, the Respondent is under no obligation to pay the assured returns to the Complainant.

1. That the present application qua enforcement of the terms of the said MOU qua assured returns deems dismissal is liable to be dismissed for the reason that this Hon'ble Authority cannot adjudicate over the subject matter of the assured returns/rentals in as much as the same is an aspect/facet out of the many related/incidental aspects covered under the BUDS Act. As a necessary corollary, an order/decision on the subject matter falling within the realms of the BUDS Act, would not only amount to exercise of arbitrary and excessive jurisdiction by the Hon'ble Authority but such action would also be unsustainable in the eyes of law. It is imperative to mention here that Section 8 of the BUDS Act provides that the appropriate Government shall, with the concurrence of the Chief Justice of the concerned High Court by notification, constitute one or more Courts known as the Designated Courts for such area or areas or such case or cases, as may be specified in such notification, which shall be presided over by a Judge not below the rank of a District and

Sessions Judge or Additional District and Sessions Judge. Pertinently, Section 8(2) of the BUDS Act provides that no Court other than the Designated Court shall have jurisdiction in respect of any matter to which the provisions of the BUDS Act apply.

- m. That after making sincere efforts despite the force majeure conditions, the Respondent completed the construction and thereafter applied for the Occupancy Certificate (OC) on 15.07.2020. That it is pertinent to mention here the project was also affected due to the COVID-19 pandemic and after completing the project, the Respondent applied for OC on 15.07.2020, however it took considerable time in grant of OC and was finally received by the Respondent on 17.02.2021 i.e. almost after a period of 7 months from the date of application for grant of OC. That this delay of the Competent Authorities in giving OC cannot be attributed in considering the delay in delivering the possession of the unit, since on the day the Respondent applied for OC, the unit was complete in all respects. It is pertinent to state that the Occupation Certificate with respect to the Tower where the unit is situated was only granted after inspections by the relevant authorities and after ascertaining that the construction was completed in all respect in accordance with the approved plans and that the unit was in a habitable condition.
- n. That the OC has been received by the Respondent Company on 17.02.2021. That immediately after the receipt of the OC on 17.02.2021, the Respondent Company sent a letter dated 12.05.2021 along with the statement of accounts requesting the Complainants to come forward and clear their dues and start the process of fit outs and take possession of the unit in question. That from the facts as narrated above it become quite evident that despite the Tower/unit of the Complainants being complete in all respect, the Answering Respondent could not have

offered possession of the unit because of the Force majeure conditions as detailed above. However in the present case, the issue is not related to delay in handing over the possession of the unit since time was not an essence of the contract and there was no time limit provided under the Agreement between the parties.

- o. That it is in the humble submission of the answering Respondent that as per the MOU executed between the parties, the Complainants were duty bound to pay the remaining/balance consideration to the Respondent on the notice of offer of possession. That the possession was offered to the Complainants vide letter dated 12.05.2021 and they were requested to come and clear their dues. It is submitted that despite regular follow ups, the Complainants failed to come forward to clear their dues, constrained by which the Respondent herein issued an intimation of termination dated 10.02.2022 to the Complainants herein. It is submitted that the intimation of termination dated 10.02.2022 issued by the Respondent Company is as per Article 1.4 of the MOU entered into between the parties. That the Respondent Company has not acted beyond the scope of the MOU entered into between the parties. It is submitted that in terms of the termination letter the unit of the Complainants stand cancelled and the Complainants have no right whatsoever over the said unit.
 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 these undisputed documents and submission made by the parties.
- E. Jurisdiction of the Authority**
8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by 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

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

Section 11

.....

(4) 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.

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

F. Findings on the objections raised by the respondent.**F.I. Objection regarding force majeure conditions**

12. The respondent in the present matter has raised the contention in its reply, the reasons for the delay in the construction of the project for kind

consideration of the authority to cover the said instance in force majeure clause and grant extension of time for calculating the due date of possession. The respondent stated that the project in question was launched in the year 2010 and is right on the Dwarka expressway, which was supposed to be completed by the State of Haryana by the end of 2012. That the star purpose of launching the project and object of the Complaints buying the project was the connectivity of Dwarka expressway which was promised by the State Government to be completed in the year 2012. The completion of Dwarka expressway, which in turn affected the completion of the project in question was beyond the control of the Respondent.

13. Although the term "force majeure" is not defined under the Act, 2016 or the Rules, 2017 but the literal meaning of force majeure includes an event that cannot be reasonably anticipated or controlled which may include Act of God, orders of court or any stay by government. The authority after due consideration is of the considerate view that the said situation such as demonetization etc. are all devoid of merits and cannot be considered as a force majeure as the same cannot be covered under any situation of Act of God or any stay order by court of Govt. Furthermore, it is incumbent upon the Respondent to duly take into account all relevant factors prior to determining and stipulating the due date for possession of the said project.

G. Findings on the relief sought by the complainants.

G.I. Direct the respondent to handover the possession of the Shop no. 52 to the complainant in time bound manner.

G.II. Declare the termination dated 10.02.2022 as null and void.

G.III. Direct the respondent to pay delay possession charges as per RERA Act, 2016.

G.IV. Direct the respondent to pay unpaid assured return along with interest.

14. The complainant allottee, vide MoU dated 04.05.2013, was allotted a unit bearing no. G-52, situated on the Ground Floor in the Respondent's project

titled "114 Avenue", located at Sector 114, District Gurgaon, Haryana. stipulating a total sale consideration of ₹1,12,82,838/- against which the complainant has paid ₹1,05,31,084/-.

15. The Authority observes that no BBA has been executed between the parties. Therefore, the Authority is of view that the due date of possession is calculated as per the judgment passed by the Hon'ble Supreme Court in case titled as ***Fortune Infrastructure and Ors. Versus Trevor D 'Lima and Ors (12.03.2018)*** wherein the Apex Court observed that "*a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that **when there was no delivery period.***" Accordingly, the due date of possession is calculated 3 years from the date of MoU the possession was due on or before 04.05.2016.
16. The respondent obtained the occupation certificate from the competent authority on 17.02.2021 and offered the said unit to the complainants vide letter dated 12.05.2021. The respondent thereafter on 10.02.2022 finally cancelled the unit of the complainant. The counsel for the respondent on hearing dated 16.09.2025 stated at bar that the unit is still available with the respondent and the respondent is ready to hand over the physical possession of the unit to the complainant after clearing the dues but then the complainant shall not be entitled for the assured return.

Assured Return

17. The complainants are seeking unpaid assured returns on monthly basis as per the MoU at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the MoU. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same by taking a plea that the same is not payable in view of enactment of the Banning of Unregulated Deposit Schemes Act, 2019

(hereinafter referred to as the Act of 2019), citing earlier decision of the authority (*Brhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd., complaint no 141 of 2018*) whereby relief of assured return was declined by the authority. The authority has rejected the aforesaid objections raised by the respondent in *CR/8001/2022 titled as Gaurav Kaushik and anr. Vs. Vatika Ltd.* wherein the authority has 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 Act of 2019. Thus, the plea advanced by the respondent is not sustainable in view of the aforesaid reasoning and case cited above.

18. The money was taken by the builder 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 builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint. The builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement 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 MoU.
19. It is not disputed that the respondent is a real estate developer, and it had obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the

developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainants besides initiating penal proceedings. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent is liable to pay assured return to the complainants-allottees in terms of the MoU dated 04.05.2013.

DPC

20. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

"Section 18: - Return of amount and compensation

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

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

21. **Admissibility of delay possession charges at prescribed rate of interest:**

The proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules.

22. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
23. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 16.09.2025

is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

24. On consideration of documents available on record and submissions made by the complainants and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be delivered within stipulated time i.e., by 04.05.2016.
25. However now, the proposition before it is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges?
26. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the MoU dated 04.05.2013. The assured return in this case is payable as per "MoU". The promoter had agreed to pay to the complainant/allottee ₹145.23/- per sq. ft. on monthly basis till the first lease rent become payable to the allottee from the lessee. If we compare this assured return with delayed possession charges payable under proviso to section 18(1) of the Act, 2016, the assured return is much better i.e., assured return in this case is payable as ₹1,13,241/- per month whereas the delayed possession charges are payable approximately ₹95,218/- per month. By way of assured return, the promoter has assured the allottee that he would be entitled for this specific amount till the said unit is put on lease. Moreover, the interest of the allottees is protected even after the completion of the building as the assured returns are payable till the date of said unit/space is put on lease. The purpose of delayed possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottees as their money is continued to be used

by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges whichever is higher.

27. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under section 18 and assured return is payable even after the date of completion of the project, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.
28. On consideration of the documents available on the record and submissions made by the parties, the complainants have sought the amount of unpaid amount of assured return as per the terms of MoU along with interest on such unpaid assured return. As per MoU dated 04.05.2013, the promoter had agreed to pay to the complainants allottee ₹145.23/- per sq. ft. on monthly basis till the said unit is put on lease. The said clause further provides that it is the obligation of the respondent promoter to pay the assured returns. It is matter of record that the amount of assured return was paid by the respondent promoter till March 2017 but later on, the respondent refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019. But that Act of 2019 does not create a bar for payment of assured returns even after coming into operation and the payments made in this regard are protected as per section 2(4)(iii) of the above-mentioned Act.
29. Admittedly, the respondent has paid an amount of ₹52,77,076/- to the complainants as assured return till March 2017. Therefore, considering the facts of the present case, the Authority observes that the respondent was obligated to pay the amount of assured return at the agreed rate i.e., @ ₹145.23/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., March 2017 till the date the said unit is put on lease.

However, the complainant is seeking actual possession of an alternate unit, as a 2 sq. meter pillar was constructed in the centre of the allotted shop, rendering it completely unusable. As a result, the complainant has not accepted physical possession of the unit. The respondent's counsel cited the COVID-19 pandemic as a reason for their inability to lease out the said unit. Moreover, the respondent's counsel has now agreed to hand over possession of the originally allotted unit, as no alternate unit is currently available.

30. The Authority observes that the respondent was obligated to deliver possession of the unit in accordance with the specifications detailed in the Memorandum of Understanding (MoU). Further, as per Section 14(1) of the RERA Act, the promoter is mandated to hand over the unit in conformity with the sanctioned plan and agreed specifications. Any deviation from this entitles the allottee to claim compensation under Section 14(3) of the Act.
31. In light of the above, the respondent is hereby directed to hand over physical possession of the complainant's unit, with the specifications agreed upon in the MoU, within two months from the date of this order. Additionally, the complainant shall be at liberty to seek compensation for any breach or non-handing over of the unit in terms of MoU & its specifications.
32. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 17.02.2021. Therefore, in the interest of natural justice, he should be given 2 months' time from the date of offer of possession. These 2 months of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking

possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession till the expiry of 2 months from the date of offer of possession.

33. Accordingly, the respondent is directed to pay the outstanding accrued assured return amount till the date of offer of possession plus 2 months i.e., 12.07.2021 at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @ 8.85% p.a. till the date of actual realization.

G.V. Direct the respondent to pay ₹1,00,000/- to the complainant towards cost of litigation.

34. The complainants are 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. Therefore, the complainants may approach the adjudicating officer.

H. Directions of the authority

35. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- a. The respondent is directed to pay the amount of assured return at the agreed rate i.e., @ ₹145.23/- per sq. ft. per month from the date the


payment of assured return has not been paid till the date of offer of possession plus two months i.e., 12.07.2021.

- b. The respondent is directed to pay the outstanding accrued assured return amount at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @8.85% p.a. till the date of actual realization.
- c. The respondent is directed to hand over the actual physical possession of the unit to the complainant within 2 months from the date of this order after clearance of outstanding dues.
- d. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
- e. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

36. Complaint stands disposed of.

37. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.09.2025