

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

Complaint no. : 67 of 2024
Date of complaint : 29.01.2024
Date of order : 06.08.2025

Sudarshan Gupta,
R/o: - 261, Ground Floor, Deepali,
Pitampura, Delhi-110034.

Complainant**Versus**

M/s Parsvnath Developers Ltd.
Regd. Office At: Parsvnath Tower,
Near Shahdara Metro Station,
Near Shahdara Metro Station, Delhi-110032.

Respondent**CORAM:**

Ashok Sangwan

Member**APPEARANCE:**

Kailash Chand Pandey (Advocate)
Nitish Gupta (Advocate)

Complainant
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 thereunder 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"IT Park Colony" in Sector 48, Gurgaon
2.	Nature of the project	Commercial/IT space
3.	DTPC license no.	47 of 2008 dated 11.03.2008
	Validity status	10.03.2020
	Name of licensee	Dharmander-Karambir & 3 Ors.
	Licensed area	6.45 Acres
4.	RERA registered/not registered	Not registered
5.	Unit no.	No space no. was allotted.
6.	Unit area	Super area of 1000 sq.ft. (page 19 of complaint)
7.	Date of execution of MoU	20.02.2006 (page 18 of complaint)
8.	Due date of possession	20.02.2009 [Calculated as per <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors.</i> (12.03.2018 - SC); MANU/SC/0253/2018]
9.	Total sale consideration	Rs.15,00,000/- (page 19 of complaint)
10.	Total amount paid by the complainant	Rs.13,50,000/- (as per page 26-27 of complaint)
11.	Assured return clause	2. "That out of the said total consideration amount the Second Party shall pay to the First Party a sum calculated @ Rs.1350/- per square foot of the entire super area to be allotted, on or before the signing of this Memorandum of Understanding. That First Party shall after receipt of part consideration. @ Rs.1350/- per square foot of the entire super area i.e. Rs.1350000 (Rupees Thirteen Lakhs Fifty Thousand only) give an investment return @ Rs. 26.09

		<i>per square foot per month i.e. Rs.26090 (Rupees Twenty Six Thousand Ninety only) by way of interest (subject to deduction of tax at source) w.e.f. 4/1/2006 on quarterly intervals at the end of every quarter for which it is due. That the First Party shall give an investment return (interest) @ Rs.27.50 per square foot per month of area of the Proposed Premises subject to the timely payment of balance consideration amount @ Rs.150/- per square foot of the space area i.e. Rs.150000 (Rupees One Lakh Fifty Thousand only) by Second Party till the date of offer of possession of space in the Complex."</i>
12.	Approval of revised building plans	25.06.2021
13.	Occupation certificate	Not yet received
14.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the complainant has booked a space admeasuring 1000 sq. ft. in project of the respondent named "IT Park Complex" at Sector-48, Gurugram. A memorandum of understanding stipulating the terms and conditions of the sale and purchase was duly executed between the complainant and the respondent on 20.02.2006.
- II. That the total cost of the space was Rs.15,00,000/- and it is agreed between the parties that on payment of Rs.13,50,000/- towards sale consideration of the space, the complainant shall get an investment return amounting to Rs.26,090/- per month by way of interest w.e.f. 04.01.2006 on quarterly interval of every quarters. The final payment of Rs.1,50,000/- is required to be paid at the time of possession.

- III. That the complainant had paid an amount of Rs.13,50,000/- to the respondent towards the sale consideration and the aforesaid amount is duly received and acknowledged by the respondent against receipts and the same has been duly mentioned in MoU dated 20.02.2006.
- IV. That it is agreed by the respondent that the office space shall be developed and handed over to the complainant within 3 years and if the complainant wish, in that case the respondent shall let it out on behalf of the complainant and he shall get the rental income of the space.
- V. That the respondent had paid assured interest to the complainant as per memorandum of understanding till June, 2016 and thereafter, the respondent stopped paying assured interest however, the respondent keep depositing TDS against the assured interest. The complainant requested the respondent to pay the assured interest as per agreement but the respondent completely failed to pay the assured interest to the complainant and the assured return is due on part of the respondent from July, 2016 till date.
- VI. That the respondent has not developed the project till date. Vide letter dated 03.02.2021 the respondent informed that the development work within the project is at advance stage and they are entering into joint development but the complainant did not see any development in the project.
- VII. That despite several requests and reminders the respondent is not giving any reply. The respondent is neither making the payment of agreed monthly interest return nor providing details of space and its location. In these compelling circumstances, the complainant has left with no other option except to file the present complaint before this

Authority praying for possession and for payment of agreed assured interest with direction to the respondent to disclose the unit number, tower no, floor number for the booked unit.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - I. Direct the respondents to disclose the space details and layout plans.
 - II. Direct the respondent to pay the assured monthly return on investment as agreed as per the MoU.
 - III. Direct the respondents to handover the possession of the said unit.
 - IV. Direct the respondents to pay an amount of Rs.2,00,000/- towards cost of litigation.
5. The respondent/promoter put in appearance through its counsel and marked attendance on 20.03.2024, 22.05.2024, 17.07.2024 and 08.01.2025. Despite specific directions for filing of reply, the respondent has failed to comply with the orders of the Authority. It shows that the respondent was intentionally delaying the procedure of the court by avoiding filing of reply in the matter. Therefore, in view of above, the defence of the respondent was struck off vide proceedings dated 08.01.2025.
6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the complainant.

D. Jurisdiction of the authority

7. The Authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate



Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

D.II Subject matter jurisdiction

9. 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.

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter.

E. Findings on the relief sought by the complainant.

E.I Direct the respondents to disclose the space details and layout plans.

11. As per Section 19(1) of the Act, the allottee is entitled to obtain information relating to sanctioned plans, layout plan along with specifications, approved by the competent authority and such other information as provided in this Act or Rules and Regulations made thereunder or the agreement for sale signed with the promoter. Therefore, in view of the same, the respondent is directed to provide the said plans along with required information to the complainant within a period of 1 month from the date of this order.



E.II Direct the respondent to pay the assured monthly return on investment as agreed as per the MoU.

12. The complainant has submitted that he has booked a space admeasuring 1000 sq. ft. in project of the respondent named "IT Park Complex" at Sector-48, Gurugram. A memorandum of understanding stipulating the terms and conditions of the sale and purchase was duly executed between the parties on 20.02.2006. The total cost of the space was Rs.15,00,000/- and it is agreed between the parties that on payment of Rs.13,50,000/- towards sale consideration of the space, the complainant shall get an investment return amounting to Rs.26,090/- per month by way of interest w.e.f. 04.01.2006 on quarterly interval of every quarters. The complainant had paid an amount of Rs.13,50,000/- to the respondent towards the sale consideration and the aforesaid amount is duly received and acknowledged by the respondent against receipts and the same has been duly mentioned in MoU dated 20.02.2006. The respondent had paid assured interest to the complainant as per memorandum of understanding till June 2016 and thereafter, the respondent stopped paying assured interest. The complainant requested the respondent to pay the assured interest as per agreement, but the respondent completely failed to pay the assured interest to the complainant and the assured return is due on part of the respondent from July, 2016 till date.
13. The MoU dated 20.02.2006 can be considered as an agreement for sale interpreting the definition of the agreement for "agreement for sale" under section 2(c) of the Act and broadly by taking into consideration the objects of the Act. Therefore, the promoter and allottee would be bound by the obligations contained in the memorandum of understandings and the promoter shall be responsible for all obligations, responsibilities, and functions to the allottee as per the



agreement for sale executed inter-se them under Section 11(4)(a) of the Act. An agreement defines the rights and liabilities of both the parties i.e., promoter and the allottee and marks the start of new contractual relationship between them. This contractual relationship gives rise to future agreements and transactions between them. The "agreement for sale" after coming into force of this Act (i.e., Act of 2016) shall be in the prescribed form as per rules but this Act of 2016 does not rewrite the "agreement" entered between promoter and allottee prior to coming into force of the Act as held by the Hon'ble Bombay High Court in case **Neelkamal Realtors Suburban Private Limited and Anr. v/s Union of India & Ors.**, (Writ Petition No. 2737 of 2017) decided on 06.12.2017.

14. The money was taken by the promoter as a deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the 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.
15. Further, if the project in which the advance has been received by the developer from an allottee is an ongoing project as per Section 3(1) of the Act of 2016 then, the same would fall within the jurisdiction of the Authority for giving the desired relief to the complainant besides initiating penal proceedings. 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.

16. In the present complaint, the assured return was payable as per clause 2 of MoU, which is reproduced below for the ready reference:

Clause 2.

"That out of the said total consideration amount the Second Party shall pay to the First Party a sum calculated @ Rs.1350/- per square foot of the entire super area to be allotted, on or before the signing of this Memorandum of Understanding. That First Party shall after receipt of part consideration. @ Rs.1350/- per square foot of the entire super area i.e. Rs.1350000 (Rupees Thirteen Lakhs Fifty Thousand only) give an investment return @ Rs. 26.09 per square foot per month i.e. Rs.26090/- (Rupees Twenty Six Thousand Ninety only) by way of interest (subject to deduction of tax at source) w.e.f. 4/1/2006 on quarterly intervals at the end of every quarter for which it is due. That the First Party shall give an investment return (interest) @ Rs.27.50/- per square foot per month of area of the Proposed Premises subject to the timely payment of balance consideration amount @ Rs.150/- per square foot of the space area i.e. Rs.150000/- (Rupees One Lakh Fifty Thousand only) by Second Party till the date of offer of possession of space in the Complex."

Thus, the assured return was payable @Rs.26,090/- (inclusive of TDS) per month w.e.f. 04.01.2006, till possession of the space is handed over to the complainant by the respondents.

17. In light of the reasons mentioned above, the Authority is of the view that as per the MoU dated 20.02.2006, it was obligation on the part of the respondent to pay the assured return. 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 20.02.2006. Further, it is to be noted that the possession of the subject unit has not been offered to the complainant since occupation certificate for the project in question has not been obtained by the respondent till date. Accordingly, the liability of the respondent to pay assured return as per MoU is still continuing. Therefore, the respondent is directed to pay assured return to the complainant at the agreed rate i.e., @Rs.26,090/- (inclusive of TDS) per month from the date i.e., 04.01.2006 till possession of the subject space is offered to the complainant post receipt of OC/CC as per the



memorandum of understanding, after deducting the amount already paid on account of assured return to the complainant.

E.III Direct the respondent to handover the possession of the said unit.

18. There is nothing on the record to show that the respondent has applied for OC/CC or what is the status of the development of the above-mentioned project. Hence, the respondent is directed to handover the possession of the space/unit to the complainant in terms of the memorandum of understanding dated 20.02.2006 executed between the parties.

E.IV Direct the respondent to pay cost of litigation.

19. 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. has held that an allottee is entitled to claim compensation and 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 and 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 and legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

F. Directions of the authority

20. 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 is directed to pay assured return to the complainant at the agreed rate i.e., @Rs.26,090/- (inclusive of TDS)

per month from the date i.e., 04.01.2006 till possession of the subject space is offered to the complainant post receipt of OC/CC as per the memorandum of understanding, after deducting the amount already paid on account of assured return to the complainant.

- ii. The respondent is further directed to pay arrears of accrued assured return as per MoU dated 20.02.2006 at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @9.10% p.a. till the date of actual realization.
 - iii. The respondent is directed to handover possession of the unit/space in question to the complainant in terms of the memorandum of understanding dated 20.02.2006.
 - iv. The respondent shall not charge anything from the complainant which is not the part of the MoU dated 20.02.2006.
 - v. The respondent is directed to provide the layout plans along with required information to the complainant within a period of 1 month from the date of this order.
21. Complaint stands disposed of.
22. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.08.2025