

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

Complaint no.	:	6123 of 2024
Date of complaint	:	27.12.2024
Date of order	:	12.11.2025

Priyanka Joshi, R/o: 55, Adarsh Nagar, Sirohi, Rajasthan-307001.	Complainant
Versus	
M/s K.S. Propmart Private Limited, Having Regd. Office at: A-22, Hill View Apartments, Vasant Vihar, New Delhi-110057.	Respondent

CORAM:

Ashok Sangwan

Member**APPEARANCE:**

Jitmanyu Kohli (Advocate)	Complainant
Jagdeep Yadav (Advocate)	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 as provided under the provision of the Act

or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Project and unit related details

2. The particulars of the project, the amount of 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.	Heads	Details
1.	Name and location of the project	"Park Street" formerly known as "85 Avenue" Sector -85, Gurugram
2.	Project area	2.85 acres
3.	Nature of project	Commercial
4.	RERA registered/not registered	Registered Vide no. 41 of 2019 dated 30.07.2017 Valid/renewed up to- 31.12.2021
5.	DTCP license no. & validity status	100 of 2013 dated 02.12.2013 Valid/renewed up to- 01.12.2019 Licensee- M/s K.S Propmart Pvt. Ltd.
6.	Date of Allotment	24.10.2019 (page no. 31 of complaint)
7.	Unit No.	S-22, 2 nd Floor (page no. 37 of complaint)
8.	Unit admeasuring area	347.89 sq. ft. (super area) (page no. 37 of complaint)
9.	MoU dated	01.11.2019 (page 33 of complaint)
10.	Due date of possession	01.05.2023 [Calculated as per Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018] + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the

		projects having completion date on or after 25.03.2020.
11.	Total sale consideration	Rs.21,52,047/- (page no. 48 of complaint)
12.	Amount paid by complainants	Rs.16,74,552.76/- (as per page 48 of complaint)
13.	Occupation certificate	Not obtained
14.	Date of offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
 - I. That in October 2019, the complainant was on a look-out for purchasing a commercial unit when she came to know about the respondent's under-construction commercial project "Park Street" situated at Sector 85, Gurugram, Haryana.
 - II. That the respondent had already obtained its registration certificate no. 41 of 2019 dated 30.07.2019 from RERA Gurugram, which further strengthened complainant's confidence in the claims of the respondent regarding timely delivery and completion of the project.
 - III. That relying upon the assurances, warranties, and representations made by the respondent, the complainant applied for allotment of a retail commercial unit viz. S-22, 2nd floor ad-measuring 347.89 sq. ft. vide an application form dated 01.10.2019 and paid a booking fee of Rs.50,000/-. That, at the time of booking and as per clause 20(a) of the application for allotment, the complainant was assured and promised that the occupation certificate in respect of the project shall be obtained not later than 42 months from the date of receipt of all approvals such as building plans, inter alia. It is submitted that no builder-buyer agreement per-se has been executed between the complainant and respondent. On 24.10.2019, the respondent issued

an allotment letter to the complainant whereby she was allotted unit no. S-22 on the 2nd Floor of the respondent's project.

- IV. That on 01.11.2019, the complainant and the respondent executed a Memorandum of Understanding whereby the terms and conditions of their transaction was further elaborated and defined.
- V. That as per clause 3.1.1 of the MoU, the respondent was obligated to pay to the complainant "Pre-possession lease rental" if the filling of the occupation certificate is delayed beyond 36 months from the date of this MoU i.e. 01.11.2019. However, even after expiry of the said period of 36 months no such amount has been paid to the complainant till date.
- VI. That, the complainant has paid all demands that have been raised upon her in a timely manner and that out of the total sale price of Rs.21,52,047/-, the complainant has paid an amount of Rs.16,74,550/- till date.
- VII. That the respondent's project is still incomplete and it has failed to obtain occupation certificate for the same. It is further stated that the RERA registration of the aforesaid project has already expired and the Authority has already dismissed the respondent's application under Section 7(3) of the Act, 2016 for grant of extension for completion of project. This dismissal of application in effect means that the project of the respondent has stalled and is lapsed.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - i. Direct the respondent to refund the entire paid-up amount along with prescribed rate of interest.

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 by way of written reply has made the following submissions:
- i. That the complainant made an application for provisional allotment of a unit bearing number S-22 on the second-floor admeasuring area a tentative super area of 349.89 sq.ft in the project developed by the respondent wide application form. That as per the memorandum of understanding, the total sale consideration amount of the unit was Rs.21,52,047/- exclusive of EDC, IDC, interest-free maintenance security, electricity connection charges, power backup charges, air conditioning charges, service taxes and such other levies/cesses/VAT as may be imposed by any statutory authority.
 - ii. That there was no time limit provided under the MoU for handing the possession of unit. However, it was mutually agreed upon that the complainant would be entitled to the benefit of assured return as per the terms of the MoU. It was mutually agreed between the parties that the respondent company would not be liable to pay any assured return to the complainant for the initial period of 36 months. It was further agreed only from the 37th month onwards, the answering respondent shall be liable to pay the monthly assured return/pre-lease rental to the complainant on a pro-rata basis and that too only till the stage of filing of application for occupation certificate.

- iii. That the assured return amount for the said period of 36 months had already been duly adjusted and paid to the complainant by way of NET Present Value discount amounting to Rs.3,85,115/-, which was duly received by the complainant. However, the payment of the assured return was subject to the force major clause as provided under clause 6 of the MoU.
 - iv. That the construction and development of the project was affected due to force majeure conditions such as shortage of labour, stay on construction due to orders passed by NGT, lack of infrastructure facilities, implementation of social schemes like NREGA and JNNURM, shortage of sand and bricks, demonetization, implementation of GST, COVID-19 pandemic etc.
7. Copies of all relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submissions made by 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

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the 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 completed 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)(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 promoter, 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.

F. Findings on the objections raised by the respondent.

F.I. Objection regarding force majeure conditions.

12. The respondent has raised the contention that the construction of the project has been delayed due to force majeure circumstances such as shortage of labour, demonetization and implementation of social schemes like NREGA and JNNURM etc., demonetization, delay on part of govt. authorities in granting approvals and other formalities, shortage of labour force in the NCR region, ban on the use of underground water for construction purposes, stay on construction due to orders passed by

NGT, Covid 19 pandemic etc. The Authority observes that the due date of possession was 01.11.2022. Further, an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 01.05.2023. As far as other contentions of the respondent w.r.t delay in construction of the project is concerned, the same are disallowed as firstly the orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-promoter leading to such a delay in the completion. 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 cannot be granted any leniency on based 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.I Direct the respondent to refund the entire paid-up amount along with prescribed rate of interest.

13. The complainant intends to withdraw from the project and is seeking return of the amount paid by her in respect of subject unit along with interest at the prescribed rate as provided under Section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

"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. -

- (a). in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
(b). due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other

remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: 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."

14. **Due date of possession:** The Hon'ble Supreme Court in the case of *Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC)*; *MANU /SC /0253 /2018* 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 stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.
15. In view of the above-mentioned reasoning, the date of execution of MoU i.e. 01.11.2019 is ought to be taken as the date for calculating due date of possession. Further, an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 01.05.2023.
16. **Admissibility of refund at prescribed rate of interest:** The complainant is seeking refund of the amount paid by her at the prescribed rate of interest in respect of the subject unit with interest at prescribed rate as provided under Rule 15 of the Rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

- (1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

17. The legislature in its wisdom in the subordinate legislation under the provision of 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.
18. 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., 12.11.2025 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
19. On consideration of the documents available on record as well as submissions made by the parties, the Authority is satisfied that the respondent is in contravention of the Section 11(4)(a) of the Act by not handing over possession by the due date. The Authority observes that the due date of handing over of possession was 01.05.2023. However, occupation certificate for the project in question has not been obtained by the respondent/promoter till date.
20. Keeping in view the fact that the complainant/allottee wishes to withdraw from the project and is demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by

the date specified therein, the matter is covered under Section 18(1) of the Act of 2016.

21. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent/promoter. The Authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021:***

".... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

22. Further, the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357 reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022. observed as under: -

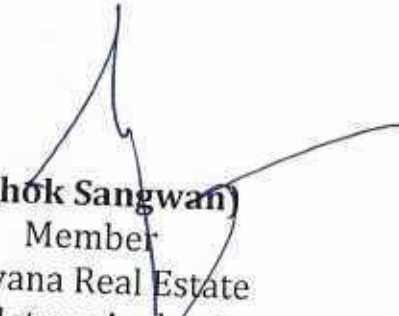
"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

23. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under Section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as she wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by the promoter in respect of the unit with interest at such rate as may be prescribed.
24. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by her i.e. Rs.16,74,552.76/- at the prescribed rate of interest i.e., @10.85% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in Rule 16 of the Rules, 2017.
- H. Directions of the authority**
25. 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 is directed to refund the paid-up amount i.e. Rs.16,74,552.76/- received by it from the complainant along with interest at the rate of 10.85% p.a. as prescribed under Rule 15 of

the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.

- ii. 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.
 - iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainant. Even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of complainant/allottee.
26. The complaint stands disposed of.
27. File be consigned to registry.

Dated: 12.11.2025



(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

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