

BEFORE THE HARYANA REAL ESTATE REGULATORY
 AUTHORITY, GURUGRAM

 Date of Decision: **12.09.2025**

NAME OF THE BUILDER		Parsvnath Developers Limited and Titan Infracon LLP	
PROJECT NAME		"Parsvnath Techinca"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/1188/2025	ARD Enterprises V/S Parsvnath Developers Limited and Titan Infracon LLP	Manmohan Krishan Dang (Advocate) Ankit Goel (Advocate) Gunjan Kumar (Advocate)
2.	CR/1189/2025	ARD Enterprises V/S Parsvnath Developers Limited and Titan Infracon LLP	Manmohan Krishan Dang (Advocate) Ankit Goel (Advocate) Gunjan Kumar (Advocate)
3.	CR/1192/2025	ARD Enterprises V/S Parsvnath Developers Limited and Titan Infracon LLP	Manmohan Krishan Dang (Advocate) Ankit Goel (Advocate) Gunjan Kumar (Advocate)
4.	CR/1194/2025	ARD Enterprises V/S Parsvnath Developers Limited and Titan Infracon LLP	Manmohan Krishan Dang (Advocate) Ankit Goel (Advocate) Gunjan Kumar (Advocate)
5.	CR/1195/2025	ARD Enterprises V/S Parsvnath Developers Limited and Titan Infracon LLP	Manmohan Krishan Dang (Advocate) Ankit Goel (Advocate) Gunjan Kumar (Advocate)
6.	CR/1200/2025	ARD Enterprises V/S Parsvnath Developers Limited and Titan Infracon LLP	Manmohan Krishan Dang (Advocate) Ankit Goel (Advocate)

			Gunjan Kumar (Advocate)
7.	CR/1203/2025	ARD Enterprises V/S Parsvnath Developers Limited and Titan Infracon LLP	Manmohan Krishan Dang (Advocate) Ankit Goel (Advocate) Gunjan Kumar (Advocate)

CORAM:

Shri Arun Kumar

Chairman
ORDER

1. This order shall dispose of seven (7) complaints titled as above filed before this authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Parsvnath Techinca" being developed by the same respondents/promoters i.e., M/s Parsvnath Developers Limited and Titan Infracon LLP. The terms and conditions of the buyer's agreements, fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking delay possession charges along with interest and other.
3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount and relief sought are given in the table below:

Project Name and Location	"Parsvnath Techinca" situated in Sector- 48, Sohna Road, Gurugram.
Project Area DTCP License No.	6.44 Acres 47 of 2008 dated 11.03.2008 valid till 10.03.2025
RERA Registered	Not Registered

Possession Clause: -

(Calculated as per *Fortune Infrastructure and Ors. Vs. Trevor D'Lima and Ors. (12.03.2018- SC); MANU/SC/0253/2018* From the date of addendum of flat buyer agreement i.e. 11.02.2014

Occupation certificate: - 05.08.2025

Sr. No.	Complaint no. / Title/ Date of Filing / Reply	Unit no. and area	Date of flat buyer agreement	Status of Possession	Total sale consideration and amount paid
1.	CR/1188/2025 ARD Enterprises V/S Parsvnath Developers Limited and Titan Infracon LLP DOF 17.03.2025 Reply Not filed	584, 5 th floor 695 sq. ft.	10.02.2014	Not offered	TSC: Rs.17,37,500/- AP: Rs.16,21,734/-
2.	CR/1189/2025 ARD Enterprises V/S Parsvnath Developers Limited and Titan Infracon LLP DOF 17.03.2025 Reply Not filed	594, 5 th floor 695 sq. ft	10.02.2014	Not offered	TSC: Rs.17,37,500/- AP: Rs.16,21,734/-

3.	CR/1192/2025 ARD Enterprises V/S Parsvnath Developers Limited and Titan Infracon LLP DOF 17.03.2025 Reply Not filed	550, 5 th floor, Tower-A 695 sq. ft	16.05.2014	Not offered	TSC: Rs.17,37,500/- AP: Rs.16,21,734/-
4.	CR/1194/2025 ARD Enterprises V/S Parsvnath Developers Limited and Titan Infracon LLP DOF 17.03.2025 Reply Not filed	558, 5 th floor, Tower-I 760 sq. ft	27.03.2014	Not offered	TSC: Rs.19,00,000/- AP: Rs.17,73,407/-
5.	CR/1195/2025 ARD Enterprises V/S Parsvnath Developers Limited and Titan Infracon LLP DOF 17.03.2025 Reply Not filed	559, 5 th floor, Tower-C 760 sq. ft	27.03.2014	Not offered	TSC: Rs.19,00,000/- AP: Rs.17,73,407/-

6.	CR/1200/2025 ARD Enterprises V/S Parsvnath Developers Limited and Titan Infracon LLP DOF 17.03.2025 Reply Not filed	560, 5 th floor, Tower-C 705 sq. ft.	16.05.2014	Not offered	TSC: Rs.17,62,500/- AP: Rs.16,45,068/-
7.	CR/1203/2025 ARD Enterprises V/S Parsvnath Developers Limited and Titan Infracon LLP DOF 17.03.2025 Reply Not filed	561, 5 th floor, Tower-G 705 sq. ft.	16.05.2014	Not offered	TSC: Rs.17,62,500/- AP: Rs.16,45,068/-

Note: In the table referred above, certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing complaint
TSC	Total Sale consideration
AP	Amount paid by the allottee(s)

4. The aforesaid complaints were filed against the promoter on account of violation of the buyer's agreement against the allotment of units in the project of the respondents/builders and for not handing over the possession by the due date, seeking award of possession along with delayed possession charges.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondents in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters,

the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case ***CR/1188/2025 titled as ARD Enterprises V/S Parsvnath Developers Limited and Titan Infracon LLP*** are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges along with interest and others.

A. Unit and project related details

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

S. No.	Particulars	Details
1.	Name and location of the project	"Parsvnath Technica", Sector 48, Sohna Road, Gurugram
2.	Nature	Commercial/IT Park complex
3.	Project area	6.44 acres
4.	DTCP License	47 of 2008 dated 11.03.2008 valid upto
5.		10.03.2025
	RERA registered/ not registered	Not Registered
6.	Unit no.	548, 5 th floor (As per page 27 of complaint)
7.	Unit area admeasuring	695 sq. ft.

	(super area)	(As per page 30 of complaint)
8.	Allotment letter	11.02.2014 (page 27 of complaint)
9.	Date of execution of buyer's agreement	10.02.2014 (As per BBA on page 33 of complaint)
10.	Addendum to flat buyer agreement	11.02.2014 (page 61 of complaint)
11.	MOU	28.01.2019 (Page 70 of complaint)
12.	Assured return	1. <i>Rs. 42.5 per sq. ft. per month w.e.f. 01.03.2014 till the office space are leased out</i> (as per addendum agreement on page 62 of complaint)
13.	Possession Clause	<i>N/A</i>
14.	Due date of possession	11.02.2017 (Calculated as per Fortune Infrastructure and Ors. Vs. Trevor D'Lima and Ors. (12.03.2018- SC); MANU/SC/0253/2018 From the date of addendum to flat buyer agreement i.e. 11.02.2014)
15.	Total sale consideration	Rs.17,37,500/-

		(As per allotment letter on page 27 of complaint)
16.	Amount paid by the complainant	Rs.16,21,734/- (as per payment receipt on page 31 of complaint)
17.	Occupation certificate	05.08.2025 (as per DTCP website)
18.	Offer of possession	Not offered

B. Facts of the complaint:

8. The complainant has made the following submissions in the complaint:
 - i. That the present complaint has been filed by the complainant under Section 31 of Real Estate (Regulation and Development) Act, 2016 and Rule 28 of the Real Estate (Regulation and Development) Rules, 2017 seeking relief in respect of the lapses, defaults and unjust and unfair trade practices on the part of the respondents.
 - ii. That around February, 2013, Sh. Ashok Kumar Dubey, partner and authorized person of the complainant received a marketing call from the office of the respondent No. 1 for booking an office space in its project namely, 'Parsvnath Technica Park' portraying a very rosy picture of the project. Several representations with respect to the numerous world class facilities to be provided were made. Believing they said representations and relying upon the advertisements, assurances and promises in the brochures circulated by respondent No. 1 about the timely completion of a premium project with impeccable facilities and believing the same to be correct, the complainant booked office space bearing No. 558 on fifth floor in the commercial/IT park complex having super area measuring 760

square feet being constructed under the name and style of 'Parsvnath Technica' in the revenue estate of Tikri, District Gurugram through a broker, namely Mr. Ankur Jain. Along with its application, the complainant made payment of more than 90% of the sale consideration of the said unit. Respondent no. 1 issued Allotment Letter dated 24.03.2014 provisionally allotting the said unit to the complainant. Respondent no. 1 also issued receipts confirming receipt of payment from the complainant.

- iii. That it is pertinent to mention here that at the time of the booking, it was represented and assured by respondent No. 1 that the said office space shall positively be completed within a period of four years from the date of the flat buyer agreement.
- iv. That before the execution of the flat buyer agreement, the complainant paid more than 90% of the total sale consideration in respect of the said unit i.e. out of the total sale consideration of Rs. 19,00,000/-, the complainant paid a sum of Rs. 17,73,407/- to respondent no. 1. Simultaneously, the flat buyer agreement dated 27.03.2014 was executed between the complainant and respondent No. 1.
- v. That an addendum to flat buyer agreement dated 28.03.2014 was executed between the complainant and respondent no. 1. As per Clause 1 of the said addendum agreement, respondent No. 1 undertook to pay an assured investment return @ Rs. 42.50 per square feet per month i.e. Rs. 32,300/- to the complainant by way of interest with effect from 01.04.2014 on quarterly intervals at the end of each of quarter till such time the office space is leased out by respondent No. 1 on behalf of the complainant.
- vi. That the said assured monthly return was to be paid by respondent no. 1 to the complainant quarterly. Initially, respondent no. 1 paid the monthly assured return upto 31.05.2016. Thereafter, numerous follow ups had to

be made by the complainant. No payment was made by respondent no. 1 despite follow ups so the complainant got legal notice dated 07.05.2018 served upon respondent no. 1 through its counsel. However, no response was forthcoming from respondent no. 1 so on 17.10.2018, the complainant was constrained to approach the Hon'ble National Company Law Tribunal, Delhi (NCLT) by filing company petition bearing no. 1448 (ND) of 2018 being an application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

vii. That it is pertinent to mention here that no development was made by respondent no. 1 during this entire time despite passage of several years. The complainant was shocked to receive letter dated 03.02.2021 vide which respondent No. 1 informed the complainant that for early completion/development of the said project, respondent No. 1 was in the process of changing beneficiary interest/joint development and marketing rights from Parsvnath Developers Limited to Titan Infracon LLP i.e. respondent no. 2 and that in principle approval for the same had been received from Director Town and Country Planning, Haryana, Chandigarh. Accordingly, the complainant vide its letter dated 14.02.2021 sent objections to the Director Town and Country Planning Haryana, Chandigarh.

viii. That it is pertinent to mention here that the respondents have miserably failed to make timely payment of the assured return to the complainant. The respondents have harassed the complainant endlessly as all the payments after June, 2016 were made belatedly to the complainant without any interest on the belated payments and that too when the complainant was compelled to initiate legal proceedings. The respondents have stopped making payment of the assured returns w.e.f. September, 2024. The respondents are liable to pay interest @ 18% p.a. on delayed

payment of assured return for the period 09.07.2014 till 31.12.2024. Not only this, the respondents have also failed to deliver the possession of the unit of the complainant for the last several years. The only aim of the respondents trying to seek change of developer is to cheat several innocent allottees like the complainant through totally false representations. Furthermore, the respondents have dishonestly misappropriated and converted to their own use the hard-earned money of the complainant as well as several other allottees and have also committed gross and blatant breach of the terms and conditions of the flat buyer agreement and addendum to the flat buyer agreement.

- ix. That no satisfactory response at all has been received by the complainant from the respondents despite making several inquiries from time to time. The respondents have failed to inform the complainant if some tenant as required has been located by the respondents in respect of the said unit or not. It has turned out that the promises of the respondents to provide the complainant with a world class project with impeccable facilities were totally false and had been made with a view to take undue advantage of the complainant. The complainant has been running from pillar to post to obtain assured returns as promised by the respondents but to no avail. The respondents have intentionally been misleading the complainant by giving total false information and assurances that they would soon handover the possession to the complainant.
- x. That the respondents have committed default in making timely payment of the assured returns. The respondents have indulged in several illegal acts, highly unethical trade practices and have cheated and defrauded the complainant. The respondents have throughout abused the dominant market position in the real estate sector against its customers including the complainant.

- xi. That, it is abundantly clear that the respondents have no intentions of abiding by the terms and conditions mentioned in the clauses of the flat buyer agreement and addendum to flat buyer agreement.
- xii. The respondents have taken unduly long period of about 11 years from the date of allotment and even now the complainant has not been delivered possession which is a grave deficiency in service. On its part the complainant had already paid more than 90% of the agreed sale consideration of the said unit. The complainant has always been ready and willing and is still ready and willing to pay the balance amount and to bear the stamp and registration expenses for the sale/conveyance deed. The complainant is also entitled to receive arrears of assured monthly interest along with interest on belated payments or to adjust the same in the balance sale consideration. The respondents are liable to do the needful as per details mentioned above immediately.

C. Relief sought by the complainant:

9. The complainant has sought following relief(s):
 - i. To handover the actual, physical, vacant possession of the Office Space No. 548, 5th Floor in the above said project to the complainant.
 - ii. To direct the respondents to execute the sale deed/conveyance deed of the above said unit in favour of the complainant.
 - iii. To direct the respondents to pay delay possession charges with interest as per RERA Act.
 - iv. To direct the respondents to honour their obligation of paying the assured monthly return of Rs. 29,537/- per month from September, 2024 till the actual possession of the said unit is handed over to the complainant along with interest @18% per annum for the period of default till the date of actual realization of the said amount.

- v. To direct the respondents to pay a sum of Rs. 1,00,000/- towards litigation cost.
- vi. To direct the respondents to pay a sum of Rs. 5,00,000/- towards cost for mental agony and harassment caused to the complainant.

D. Reply by the respondents.

- 10. No reply has been received from respondent no.1 with regard to the present complaint despite multiple opportunities already granted. Therefore, the respondent no.1 is being proceeded ex-parte and the complaint will be decided as per the documents available on record as well as submissions made by the parties.
- 11. The respondent no.2 contested the complaint by filing reply dated 12.09.2025 on the following grounds: -

- (i) That the complainant had been allotted office space bearing no. 548 on 5th Floor in the commercial/IT Park having a super area admeasuring 695 sq. ft. Thereafter, the Respondent No. 1 upon taking the payment issued all the payments receipts to the Complainant.
- (ii) That the respondent no.2 has been wrongly impleaded as party in this complaint as there is no privity of contract between the complainant and respondent no.2. Moreover, the Agreement has been executed between the Complainant and the Respondent No. 1 and all the payment receipts and allotment have been issued by the Respondent No. 1 to the Complainant. There is no role of the Respondent No. 2 in the contractual obligations agreed among the Complainant and the Respondent. No. 2. In fact, respondent no.2 has come into the picture only in the year 2021 when a public notice dated 01.02.2021 had been taken out by the respondent no.1 pertaining to grant of in principle approval for change in beneficiary interest/joint development and marketing rights from

respondent no.1 to respondent no.2 by the office of Director, Town & Country Planning, Haryana, Chandigarh. Moreover, objections had also been invited from the allottees in the said project with respect to the aforesaid change. Hence, the institution of this complaint against respondent no.2 is completely misconceived and is factually and legally unsustainable both in law and on facts.

- (iii) That subsequently, development agreement bearing vasika no. 6913 dated 15.02.2021 had been executed between landowners, respondent no.1 and respondent no.2 vide which respondent no.2 had agreed to take over development rights, obligations and responsibilities of development of the said project. However, it had nowhere been incorporated in the aforesaid agreement that respondent no.2 would be liable to indemnify respondent no.1 for the contractual and financial defaults committed by respondent no.1 with the previous allottees.
- (iv) That vide order dated 19.05.2021 the DTCP, Haryana approved the request for change in beneficial interest/joint development and marketing rights under policy dated 18.02.2015 for the project land in question from respondent no.1 to respondent no.2. Thereafter, approval of revised building plans had also been granted to respondent no.2 for the said project by Chief Town Planner, Haryana cum Chairman, Building Plan Approval Committee, Town & Country Planning Department, Haryana vide letter dated 25.06.2021.
- (v) That the relief sought by the complainant in this complaint can legally be ordered only against respondent no.1 without casting any liability on respondent no.2.

12. 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 those undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

13. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

14. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

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

Section 11....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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

F. Findings on the objections raised by the respondent no.2.

F.I objection regarding maintainability of complaint against respondent no. 2

17. The respondent no.2 vides its reply dated 12.09.2025 contented that it is not concerned with the relief in the present complaint as it is not a party in the said MoUs. However, as per record available the Director, Town and Country Planning, Haryana vide its order dated 19.05.2021 allowed the request for change in beneficial interest/joint development and marketing rights under policy dated 18.02.2015 by granting licence in its favour and made it liable for compliance of all terms and conditions of the Act 1975 & Rules 1976 till granting of the completion certificate. Therefore, respondent no.2 cannot escape from its responsibilities and obligations to the allottees being licensee of the project and is covered under the definition of promoter within the meaning of 2(zk)(i), (v).

18. Promoter has been defined in section 2(zk) of the Act. The relevant portion of this section reads as under: -

"2. Definitions. — In this Act, unless the context otherwise requires —

(zk) "promoter" means, —

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(ii) xxx

(iii) xxx

(iv) xxx

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale;"

19. Further, vide clause 1.3, clause 4 and clause 23.1 of the development agreement dated 15.02.2021, the respondent no.2 agreed to take over the development and competition of the project as well as handing over of

possession after obtaining completion certificate from the concerned authorities. Also, vide clause 2 of the general power of attorney dated 15.02.2021, it was agreed that the respondent no.2 will execute and sign sale deeds, indentures, deed of transfer etc. of its area in favour of the prospective allottee(s)/buyers.

20. Also, several parameters are prescribed in policy dated 18.02.2015 for making change in beneficial interest, change in developer, assignment of joint development right/marketing rights etc. Relevant portion of it is reproduced as under.

4.1. EXAMINATION OF SUCH REQUEST UNDER THE POLICY:

"All such requests received by the DGTCP under this policy shall be examined on merits and depending upon the nature of request, the DGTCP may direct the applicant/the new entity to furnish/comply with some or all of the following requirements, as applicable, in a period not exceeding ninety days:

- i) Fresh Agreement LC-IV, Bilateral Agreement to be executed on behalf of the new entity and bank guarantees to be furnished by the bank on behalf of the new entity against internal development works and external development charges.*
- ii) An undertaking to abide by the provisions of Act/Rules and all the directions that may be given by the DGTCP in connection with the above said licenses.*
- iii) A demand draft for the balance 60% of the applicable administrative charges calculated at the rates prescribed under para 3.0 above.*
- iv) Registered Collaboration agreement between the proposed Developer and land-owning individuals/entities.*
- v) Clear the outstanding EDC/IDC dues, as specifically directed by the DGTCP.*
- vi) In projects where third-party rights stand created, objections regarding change in Developer shall be invited from the allottees through public notice as well as notice under registered cover, as per the detailed procedures and proforma prescribed by the DGTCP.*
- vii) An undertaking to settle all the pending/outstanding issues, if any, in respect of all the existing as well as prospective allottees.*

viii) An undertaking to be liable to pay all outstanding dues on account of EDC and interest thereon, if any, in future, as directed by the DGTCP.

ix) An undertaking that all the liabilities of the existing Developer shall be owned by new entity.

x) original licences and schedule of land.

xi) An undertaking that notwithstanding the assignment of joint development rights and/or marketing rights to a third-party agency, for either entire or part of the colony, the Developer shall continue to be solely responsible for compliance of provisions of the Act/Rules as well as terms and conditions of the licence (applicable in case of assignment of joint development rights and/or marketing rights)."

21. Therefore, as per the aforesaid facts and provisions of law, respondent no. 1 & 2 will be jointly and severally liable for the competition of project as well as other liabilities towards the complainant. Hence, the contention/objection of respondent no.2 stands rejected.

G. Findings on the relief sought by the complainant(s):

G.I To handover the actual, physical, vacant possession of the Office Space No. 548, 5th Floor in the above said project to the complainant.

G.II To direct the respondents to pay delay possession charges with interest as per RERA Act.

G.III To direct the respondents to honour their obligation of paying the assured monthly return of Rs. 29,537/- per month from September, 2024 till the actual possession of the said unit is handed over to the complainant along with interest @18% per annum for the period of default till the date of actual realization of the said amount.

I. Assured Return

22. The complainant is seeking unpaid assured returns on monthly basis as per addendum to the flat buyer agreement dated 11.02.2014 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said addendum. 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 while reiterating the principle of prospective ruling, has held that the authority can take different view from the earlier one on the basis of new facts and law and the pronouncements made by the apex court of the land and it was 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)(l)(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.*

23. The money was taken by the builder 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 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.
24. 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 original agreement for sale.
25. 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. The

Authority under this Act has been regulating the advances received under the project and its various other aspects. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the latter from the former against the immovable property to be transferred to the allottee later. In view of the above, the respondent is liable to pay assured return to the complainant-allotees in terms of the addendum to the flat buyer agreement dated 11.02.2014.

II. Delay Possession Charges

26. In the present complaint, the complainant intends to continue with the project and are seeking delay possession charges with respect to the subject unit as provided under the provisions of Section 18(1) of the Act which 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."

27. The subject unit was allotted to the complainant vide allotment letter dated 11.02.2014. As per addendum to the flat buyer agreement, the respondent developer was under an obligation to further lease out the unit of the complainant post completion.

III. Due Date of Possession:

28. As per the documents available on record, BBA has been executed between the parties and the due date of possession cannot be ascertained. A considerate view has already been taken by the Hon'ble Supreme Court in the cases where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration. It was held in matter **Fortune Infrastructure v. Trevor d' lima (2018) 5 SCC 442: (2018) 3 SCC (civ) 1** and then was reiterated in **Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725 :-**

"Moreover, 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 i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered."

29. Accordingly, the due date of possession is calculated as 3 years from the date of execution of addendum to buyer's agreement. Therefore, the due date of handing over of the possession comes out to be 11.02.2017.

30. Admissibility of delay possession charges at prescribed rate of interest:

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. 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.

31. 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.

32. 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., 12.09.2025 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.

33. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

34. On consideration of documents available on record and submissions made by the complainant 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 completed within a stipulated time.

35. 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?

36. 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 BBA or in the MoU. The assured return in this case is payable as per "Addendum to flat buyer agreement". The rate at which assured return has been

committed by the promoter is Rs.29,537.5/- p.m. from 01.03.2014 till the office space is leased out. 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 at Rs.29,537.5/- per month till the office space is leased out whereas the delayed possession charges are payable approximately Rs.14,663.1/- per month. By way of assured return, the promoter has assured the allottee that they would be entitled for this specific amount in terms of addendum to flat buyer agreement. 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 allottee 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.

37. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under Section 18 then the allottees shall be entitled to assured return without prejudice to any other remedy including compensation.
38. In the present complaint, as per clause 1 of the addendum to flat buyer agreement dated 11.02.2014, the amount on account of assured return was payable from 01.03.2014 upto the office space is leased out. The occupation certificate of the project in question has been obtained by the respondent on 05.08.2025. However, possession of the subject unit has not been offered by the respondent till date. Therefore, considering the facts of the present case, the respondent is directed to pay assured return to the complainant at the agreed rate i.e., @Rs.29,537.5/- per month from the date i.e., 11.02.2014 till the office space is leased out after obtaining of occupation certificate after

deducting the amount already paid on account of assured return to the complainant.

E.IV Direct the respondent to execute conveyance deed as per the agreed terms.

39. Section 17 (1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title. -

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

40. The authority observes that OC in respect of the project where the subject unit is situated has not been obtained by the respondent promoter till date. As on date, conveyance deed cannot be executed in respect of, the subject unit, however, the respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. In view of above, the respondent shall execute the conveyance deed of the allotted unit within 3 months after the receipt of the OC from the concerned authority and upon payment of requisite stamp duty by the complainant as per norms of the state government.

E.IV Direct the respondents to pay compensation on account of mental agony, despair and harassment to the complainant of Rs. 5,00,000/-

E.V To award compensation on account of litigation expenses of Rs. 1,00,000/-.

41. The complainant in the aforesaid relief is seeking 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. (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation 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 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. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the Authority:

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

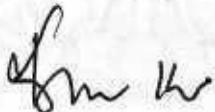
- i. The respondent/promoter is directed to pay assured return to the complainant at the agreed rate i.e., @Rs.29,537/- per month from the date i.e., 01.03.2014 till the office space is leased out after obtaining of occupation certificate after deducting the amount already paid on account of assured return to the complainant.
- ii. The respondent is directed to pay the above outstanding accrued assured return amounts till date along with interest at the rate of 10.85% p.a. within 90 days from date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would become payable with interest @ 10.85% p.a. till the date of actual realization.
- iii. The respondent shall not charge anything from the complainant which is not part of the agreement/ MoU.

- iv. The respondent-promoter is directed to handover the possession of the subject unit as per the addendum to the flat buyer agreement dated 11.02.2014.
- v. The respondent is directed to get the conveyance deed executed within a period of three months after depositing necessary payment of stamp duty and registration charges from the date of this order

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

44. Complaints stand disposed of.

45. Files be consigned to registry.



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.09.2025