

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

Complaint no. :	4442 of 2023
Date of Filing:	12.10.2023
Date of Decision:	28.11.2025

1. Meena Garg
2. Manmohan Garg

**Address at:** House no. 6, Krishna Kunj, Brij Vihar, Kamla Nagar, Behind Brij Vihar Police Choki, Dayal Bagh, Agra, Uttar Pradesh - 282005

**Complainants**

Versus

M/s KS Propmart Pvt. Ltd.

**Office:** A-22, Hill View Apartments Vasant Vihar, New Delhi, West Delhi, Delhi- 110057

**Respondent**

**CORAM:**

Shri Arun Kumar

**Chairman**

**APPEARANCE:**

Sh. Rajan Kumar Hans

Sh. Jagdeep Yadav

Advocate for the complainants  
Advocate for the 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 complainant, 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 and location of the project	Earlier 85 <sup>th</sup> avenue now "Park Street" at Sector 85, Gurugram
2.	Project area	2.85 acres
3.	DTCP license no.	100 of 2013 dated 02.12.2013 valid upto 01.12.2019
4.	Name of licensee	M/s KS Propmart Pvt. Ltd.
5.	RERA Registered/ not registered	Registered vide no. 41 of 2019 issued on 30.07.2019 up to 31.12.2021 Validity status 30.06.2022 (Additional 6 months grace period as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020) Extended up to 30.06.2023
6.	Earlier booked unit	G-03
7.	Unit no. as per MOU	G11, Ground Floor (as per MOU on page no. 25 of complaint)
8.	Unit area admeasuring as per MOU	1197.39 sq. ft. of super area (as per MOU on page no. 25 of complaint)



9.	Unit no. as per agreement to sale	G-13, Ground floor, Type-Retail (Page no. 40 of complaint)
10.	Unit area admeasuring as per agreement to sale	1197.39 sq. ft. of super area (Page no. 40 of complaint)
11.	Welcome Letter	20.12.2019 (page no. 17 of complaint)
12.	Allotment letter	21.12.2019 (page no. 18 of complaint)
13.	Date of execution of MOU	21.12.2019 (page no. 21 of complaint)
14.	Date of agreement to sale	04.10.2022 (page no. 36 of complaint)
15.	Possession Clause	<b>7. POSSESSION OF THE UNIT FOR COMMERCIAL USAGE</b> <b>7.1 Schedule for possession of the said unit:</b> The Promoter agrees and understands that timely possession of the Unit for Commercial usage along with parking to the Allottee (s) and the common areas to the association of allottees or the competent authority <b>within a period of 24 months with additional grace of 5 months from the date of execution of this agreement</b> subject to such extension as may be permitted by terms and conditions of this Agreement including the extension arising out of force majeure conditions or by the order of the competent authorities.

16.	Due date of delivery of possession	04.03.2025 (calculated from the date of agreement including grace period of 5 months as it is unqualified)
17.	Assured return clause	3. Lease Rental 3.1 PRE-POSSESSION LEASE RENTAL The Developer shall pay to the Allottee pre-possession lease rental from 01.01.2020 till the application for Occupation certificate is filed at the rate of Rs. 104.87/- per sq. ft. of super area of premises per month. (page no. 28 of compliant)
18.	Total sale consideration	Rs. 1,39,80,726/- (as per page no. 25 of complaint)
19.	Amount paid by the complainant	Rs. 1,04,06,100/- (as alleged by complainant at page 12 of complaint)
20.	Assured return paid by the respondent	Rs. 15,06,840/- upto March 2021 (as per ledger at page no. 142 of reply)
21.	Occupation certificate	Not obtained
22.	Offer of possession	Not offered

**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint:
  1. That the complainant purchased the unit in the project of respondent and on dated 20.12.2019 a welcome letter was issued by the respondent acknowledging the purchase of the unit for the unit of G-11.

- II. That on 21.12.2019 the respondent formally issued the allotment letter, whereas the complainant was allotted shop/unit no. G-11 admeasuring super built up area of 1197.39 sq. ft. for total sale consideration of Rs. 1,46,15,343/-.
- III. That earlier the complainant was holding a retail unit bearing no. G-03 in the said project for the last many years. On 21.12.2019 the complainant surrendered the said shop/unit i.e G-03 as he purchased the new retail unit G-11 in the said project.
- IV. That the complainant also requested to transfer the account entry of amount of Rs, 44,59,391/- from old shop/unit no. G-03 to the new shop/unit no. G-11.
- V. That on 21.12.2019 a memorandum of understanding (MOU) was executed between the respondent and the complainant. As per clause 3.1 of the MOU the respondent undertook to pay an assured return of Rs.104.87 per sq. ft. of super area per month from 01.01.2020 till application of occupation certificate is filed.
- VI. That as per clause 3.4 of the MOU the respondent shall pay allottee lease rental till offer of possession is made to the complainant.
- VII. That on 04.10.2022 the respondent and the complainants entered into an agreement for sale for the new unit G-13 as the respondent had sold the unit G-11 to someone else and provided this unit adjacent to the previous unit which was of same size. This agreement was executed after 3 years from the date allotment which itself is a contravention of Section 13 of RERA Act, 2016 by the respondent. As per clause 1.13 the complainants have paid a total amount of Rs.1,04,06,100/- against the said unit.

VIII. That on demand of the respondent the complainants have already paid an amount of Rs. 1,04,06,009/- inclusive of taxes and cess for the said unit and nothing is due towards the complainant as on date. The actual grievance of the complainants arose on 19.06.2023 when the respondent issued a letter to the complainant regarding the outstanding assured return. The respondent without giving any proof of calculation quoted an amount of Rs. 4,34,652/- which is way less than the actual outstanding assured return.

IX. That the complainant on 07.07.2023 vide an email replied to the above said letter of the respondent and rejected all the baseless claim of the respondent. As per the calculations the actual pending assured return amounts to Rs. 17,67,096/- which was mentioned in the email to the respondent as well.

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

4. The complainant in the present complaint has seeking the following relief(s).
- (i) Direct the respondent to pay pending assured return of Rs. 17,67,096/- and further which becomes due till the grant of occupation certificate.

**D. Reply by the respondent.**

5. The respondent has contested the complaint on the following grounds.
- I. That the complainant made an application for provisional allotment of a unit in the project developed by the respondent now as VSR 85 which is Park Street vide application form. That pursuant to the application form, the respondent issued welcome letter dated 20<sup>th</sup> December 2019. The respondent vide allotment letter dated 21.12.2019 allotted

- commercial unit bearing no. G- 11 on the ground floor having super area built-up area 1197.39 sq. ft. for a basic sale price of Rs 1,39,80,726/-.
- II. That one of the offers made by the respondent at that point in time was that the unit would have the benefit of pre-possession lease rental from 01.01.2020 till the application for occupation certificate is filed for the retail block subject to force majeure conditions and other conditions mentioned in the MOU. The complainant accordingly entered into MOU dated 21.12.2019 with the respondent for commercial unit no. G-11 on the ground floor has a super built-up area of 1197.39 sq. ft.
- III. That as per the instalment payment plan, the complainants were bound to pay a sum of Rs 1,38,84,575/- till date. However, the complainants have made the payment of Rs 91,50,601/-. In this manner, a sum of Rs. 34,78,476/- is still outstanding and payable by the complainants. Taking into reckoning the entire facts of the case as well as documents the answering respondent is not under any obligation to pay any amount to the complainants. Even the entire GST amount has not been paid by the complainant.
- IV. That the complainants requested for surrender/change of their unit. The respondent as a goodwill gesture acceded to the request of the complainants and the allotment of the complainants was transferred from commercial unit no- 11 to commercial unit no. G-13 and the amount paid by the complainant towards commercial unit no- 11 were also transferred towards the new allotment.
- V. That since the allotment of the unit was transferred to a new unit, the respondent herein ceased to pay any pre-possession lease rental under the MOU dated 21.12.2019 executed from commercial unit number G-11. That upon transfer of allotment, MOU and agreement for sale dated



04.10.2022 was executed between the parties for the commercial unit bearing no G-13 having super area (approx. -1197.39 sq. ft for a basic sale price of Rs- 1,39,80,726/-. That the complainant herself willingly signed the MOU and agreement for sale after duly reading the clauses stipulated there in under. The complainant was neither forced nor influenced to sign the same. It is submitted that since the earlier commercial unit no- G-11 exists as allotment has been transferred to a new commercial unit i.e unit no-G-13, the MOU dated 21.12.2019 under which the respondent was liable to pay pre-possession lease rental also stands cancelled and hence the respondent is under no obligation to pay pre-possession lease rental to the complainant. It was mutually agreed between the parties that though the MOU stands cancelled yet the payment plan for the new commercial unit will remain the same. The agreement for sale dated 04.10.2022 which is now the governing contract between the parties and the same does not provide for pre-possession lease rental to be paid to the complainant. That clause 24 of the agreement to sale dated 04.10.2022 specifically mentioned that the agreement supersedes any and all other agreements Etc. Therefore, the agreement for sale dated 04.10.2022 supersedes the MOU dated 04.10.2022 and all rights and liabilities of the parties are governed/ covered under the agreement for sale dated 04.10.2022.

- VI. That as per the agreement for sale executed between the parties on 04.10.2022, the possession of the commercial unit was supposed to be handed over to the complainant within a period of 24 months with an additional grace of 5 months from the date of execution of the agreement subject to force majeure conditions.



- VII. That the allottee hereby agrees that wherever the reference is made for possession of the unit in this agreement or any other documents with reference to the unit, it shall always mean constructive possession of the unit and not physical handover of the unit to the allottee. The allottee hereby confirms that the promoter has in no way made any representation or warranty to the allottee that the promoter shall offer/hand over the physical position of the unit to the allottee except where specifically agreed by the promoter in writing with the allottee.
- VIII. That the possession of the unit has to be handed over to the complainant within 24 months with an additional grace of 5 months from the date of execution of the agreement to sale. That the agreement to agreement for sale was executed between the parties on 04.10.2022 and hence the due date for the delivery of possessions came to 04.02.2025. It is submitted that the prayer for possessions and delay in delivery of possession is there for pre-mature and hence cannot be entertained by this Hon'ble authority. The aforementioned clause would clearly show that only symbolic/ constructive possession is to be handed over to the complainant and no physical possession is supposed to be given to the complainant since the unit booked by the complainant is for leasing purposes.
- IX. That the respondent company issue an allotment letter confirming the allotment of the unit in question. At the request of the complainant herein and as a goodwill gesture, the respondent acceded to the request of the complainant and a fresh allotment letter dated 11.01.2023 for the commercial unit no G-13 having an admeasuring area 1197.39 sq. ft. was issued by respondent company.

X. That the complainant till dated has made payment of Rs 1,04,06,099/- including GST. The complainant was very well aware that timely payment was the essence of the agreement for sale executed between the parties.

6. 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**

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

**E.I Territorial jurisdiction**

8. 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**

9. 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.*

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 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 reliefs sought by the complainant:**

- (i) Direct the respondent to pay pending assured return of Rs. 17,67,096/- and further which becomes due till the grant of occupation certificate.
11. In the present complaint, the complainant booked a commercial unit in the project of the respondent namely, Park Street, situated at Sector-85 of Gurugram. The complainant was allotted a unit bearing no. G-11, ground floor admeasuring 1197.39 sq. ft. vide allotment letter dated 21.12.2019. Subsequently a Memorandum of Understanding dated 21.12.2019 was also executed between the parties. Thereafter the unit of the complainant was shifted from G-11 to G-13 and the fresh agreement for sale dated 04.10.2022 was also got executed between the parties.
12. It is the case of the complainant that an Memorandum of Understanding (MOU) was executed between the parties on 21.12.2019 for Unit G-11 wherein the respondent had agreed to pay assured return / pre-possession lease rental at the rate of Rs.104.87 per sq. ft. from 01.01.2020 till the date of application for Occupation

Certificate and therefore the respondent is liable to pay the pending amount till date.

13. The respondent on the other hand has disputed the claim and submitted that the complainant is not entitled to claim assured return as the MOU dated 21.12.2019 stood cancelled and substituted after the execution of agreement for sale dated 04.10.2022 for fresh unit no. G-13. The respondent has relied upon the Agreement for Sale dated 04.10.2022 executed in respect of Unit G-13 which specifically contains a supersession clause to the effect that the Agreement overrides all previous agreements, representations and understandings between the parties. The respondent has further argued that the agreement for sale is the binding contract between the parties and the same does not contain any clause providing for assured return or pre-possession lease rental.
14. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that the MOU dated 21.12.2019 was executed in respect of Unit G-11. Subsequently unit was changed and new agreement for sale dated 04.10.2022 was executed between the parties in respect of Unit G-13. The complainant has signed this Agreement without protest or reservation. It is also a matter of record that the agreement for sale dated 04.10.2022 contains an explicit clause no. 24 providing that the agreement shall supersede and replace all other earlier agreements, proposals, statements or undertakings between the parties. The said clause is reproduced hereunder for ready reference:

*24. Entire Agreement:*

*This Agreement, along with its schedules, constitutes the entire Agreement between the Parties with respect to the Subject matter hereof and supersedes any and all understandings, any*

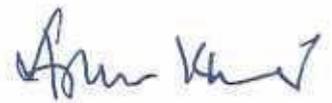
*other agreements, allotment letter, correspondences, arrangements whether written or oral, if any, between the Parties in regard to the said Unit for Commercial usage and parking (if applicable).*

15. In the present case, even assuming that the MOU created a contractual liability for assured return in respect of Unit G-11, the said MOU cannot be enforced after the execution of the Agreement for Sale dated 04.10.2022, which extinguished, substituted and replaced all prior obligations. The complainant cannot simultaneously rely upon the benefits of a fresh contractual allotment of a new unit and selectively enforce an earlier MOU associated with a surrendered unit. Such an interpretation would be contrary to both the intention of contracting parties and well-settled legal principles.
16. Further, the agreement for sale dated 04.10.2022 does not provide any assurance of lease rental or assured return. Had the parties intended continuation of such benefit, it ought to have been specifically incorporated. The absence of such a clause confirms that the contractual rights have been consciously modified by both parties. Thus, the Authority finds no legal basis to direct payment of assured return claimed in this complaint.
17. However, since the MOU dated 21.12.2019 contained a contractual clause obligating the respondent to pay assured return / lease rental from 01.01.2020 till the date of application for occupation certificate, the Authority is of the view that the complainant shall be entitled to assured return only for the period commencing from 01.01.2020 till execution of the fresh agreement for sale dated 04.10.2022, after adjusting any amount already paid. Beyond the execution of the said agreement, no liability for assured return survives.

18. Therefore, the Authority holds that the alleged assured return obligation does not survive after execution of the agreement for sale dated 04.10.2022 and the said clause stood substituted / superseded.

**G. Directions of the authority**

19. 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 only for the period commencing from 01.01.2020 till execution of the fresh agreement for sale dated 04.10.2022, after adjusting any amount if already paid.
  - 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.
20. Complaint as well as applications, if any, stands disposed off accordingly.
21. File be consigned to registry.



**(Arun Kumar)**  
**Chairman**

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.11.2025