

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

Complaint no. : 2705 of 2024

Date of decision : 12.09.2025

Arun Puri

Regd. Address at: R/O B-149 LGF Greater Kishan 1

Complainant

Versus

M/s VSR Infratech Pvt. Ltd. & others

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

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Mr. Vivek Pathak (Advocate)

Ms. Shriya Takkar (Advocate)

Counsel for Complainant

Counsel for Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	"68 Avenue", Sector 68, Gurugram, Haryana
2.	Project area	3.23 acres
3.	Nature of the project	Commercial Colony
4.	DTCP license no. and validity status	04 of 2012 dated 23.01.2012 Valid up to 22.01.2020
5.	RERA Registered/ not registered	Registered vide no. 119 of 2017 dated 28.08.2017
6.	Date of allotment of unit	19.02.2018 (Page 65 of the complaint)
7.	Unit no.	FC-28, 2 nd floor (Page no. 77 of the complaint)
8.	Unit area admeasuring	473 sq. ft. (Super area) (Page no. 77 of the complaint)
9.	MOU	10.02.2018 (page 75 of complaint)
10.	Assured return	3.1 It is hereby agreed and undertaken by the developer that from 10.02.2018 till the application for offer of possession is issued, the developer shall pay to the allottee an assured return @84.94 per sq. ft. of super area of premises per month.
11.	Possession clause	Not available
12.	Due date of possession	10.02.2021 (3 years from the date of MOU)

13.	Total sale consideration	Rs.32,21,984/- (As per customer ledger on page 90 of complaint)
14.	Amount paid by the complainants	Rs.27,35,606/- (As per customer ledger on page 90 of complaint)
15.	Occupation certificate /Completion certificate	02.08.2019 (On page 197 of reply)
16.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
- That the complainant is a law-abiding citizen of India and is compelled to invoke the jurisdiction of this hon'ble Authority due to harassment suffered by the complainant in hands of respondents.
 - That the complainant and his mother Ms. Rekha Puri, intending to purchase a commercial unit was lured, by unscrupulous agents appointed by the respondents, to purchase a commercial unit no. SC-04 and SC-05 in project to be developed by M/s KS Propmart Private Limited in name and style of 'Park Street' situated at Sector 85 Gurugram in the year 2016 by making an advance payment of Rs. 25,11,606/-. The said commercial unit was offered on guaranteed lease back scheme promising a guaranteed income at the rate of Rs.59.62/- per square feet per unit till the completion of project and handover of the possession of unit. That after handover of possession of the unit the respondents had further promised an assured rental income by leasing back arrangements at the rate of Rs.39.75 per square feet per unit.
 - That the construction of said project was inordinately delayed by M/s KS Propmart Private Limited and exasperated by the conduct of you the

addressees our clients demanded the refund of advance money of 25,11,606/- along with accrued guaranteed income at the rate of Rs.59.62/- per square feet per unit till the dated of refund of the amount paid by our clients however your agents and representative lured our clients to shift the advance money paid by our clients to the another project developed by you the addressees in name and style of 68 Avenue which, as (mis)represented, is completed and ready for possession.

- iv. That having trapped in sinister plan hatched by the respondents, complainant transferred the payment made towards purchase of commercial unit no. SC-04 and SC-05 in project to be developed by the respondents in name and style of 'Park Street' situated at Sector 85 Gurugram to commercial unit no.FC-28 admeasuring 473 sq. ft situated at Food Court of 68 Avenue located in Sector 68 Gurugram, Haryana developed by you the respondents in name of complainant vide payment transfer letter dated 02.02.2018 read with allotment letter dated 19.02.2018.
- v. That, the respondents, through your sales representative and agents have misrepresented in order to induce the complainant that the construction of project 68 Avenue is completed and ready for possession thereby impelled him to agree from shifting/transfer of money from Park Street to the said project as the ensured regular income through leasing back arrangement will start after the handover of possession of the said unit. That the complainant requested to the respondents to execute builder buyers' agreement/conveyance deed to handover and transfer the legal possession of unit No.FC-28 in the project to the complainant but to no avail.

- vi. That the complainant had paid the total purchase consideration of unit no.28 admeasuring 473 sq. ft situated at food court of 68 Avenue situated at Sector 68 Gurugram of Rs. 29,32,000 including the stamp duty and registration charges which is duly acknowledged by you the addressees.
- vii. That, subsequently, upon enquiring by the complainant about execution of conveyance deed/ builders' buyers' agreement, respondents consciously manipulated the complainant in one way or other and kept delaying the execution of the builder's buyer's agreement/ conveyance deed in favor of complainant. That the complainant, after continuous follow up and visit to the project office of the respondents was informed that the respondent no.1 has not yet received the occupancy certificate and that's why were not able to offer legal possession by executing the conveyance deed in favor of the complainant.
- viii. That subsequently, upon enquiring by complainant again and again about the completion of the project and execution of the builder's buyer agreement/ conveyance deed, the respondents kept on delaying the execution of the conveyance deed in one pretext or other. That respondents had issued a formal undated possession letter to the complainant demanding the payment of Rs. 6,84,351/ including stamp duty and registration fees payable for execution of conveyance deed and advising to take possession of the unit within 15 days of issuance of the possession letter.
- ix. That the complainant had paid the amount of Rs.684351/- and a no dues letter dated 30.04.2019 was issued in favor of the complainant by respondent no.1 however to the shock and surprise of the complainant, despite receiving the payment as demanded, respondents deliberately neglected and omitted to execute the builder's buyer's

agreement/conveyance deed in favor of the complainant. That the fraudulent conduct of the respondents is evident by the fact that the representative of the respondents, Ms. Chetna, under their instructions, continuously assured the complainant that the respondents are arranging fund to register and convey the units to all the purchasers one by one and the complainant will be informed once his turns come up.

- x. That having no other options, the complainant was constrained to wait for indefinite period for his turn to get the unit registered in his name and handover of legal possession. That subsequently in the year 2020, Ms. Chetna again apprised our clients that due to outbreak of COVID 19 all registration process is installed and she will inform once the registration process resumed by the registry.
- xi. That despite multiple assurances respondents miserably failed to execute the builder's buyer's agreement/conveyance deed in favor of our clients. That deeply frustrated by the conduct of you the respondents, complainant wrote an email dated. 30.07.2021 to you director Mr. Rakesh Jain however Rakesh Jain sinisterly neglected the email and deliberately omitted to revert to the complainant in complete dereliction of his duties as director of the respondent no1 and promoter of real estate project.
- xii. That the complainant visited multiple times to the office of the respondent no.1 requesting the execution of conveyance deed in his favor thereby transferring the legal possession and payment of the assured return but to no avail. Petitioner had multiple meetings with Mr. Amresh Mishra at office of the respondent no.1.
- xiii. That, after lot of persuasions and follow up, Mr. Chetan Swara has shared a draft conveyance deed through WhatsApp with the complainant from

his on 16.02.2023 however no attempt was made to get the same executed despite multiple reminders.

- xiv. That on one side the respondents mischievously neglected and omitted to execute the builder's buyer's agreement/conveyance deed after receiving the full purchase consideration along with stamp duty and registration charges payable to the registration authorities after issuance of the possession letter on the other hand started charging/levying discretionary maintenance charges and pressuring our clients to pay the same without any basis.
- xv. That the respondents have informed the complainant that respondents are entering into a leasing arrangement of food court having the unit of the complainant with one M/s G4S Security Systems (India) Private Limited and a letter of intent in this regard is already executed between addressee no.1 and M/s G4S Security Systems (India) Private Limited and compelled complainant to accept the LOI dated 06.02.2023 with the respondent no.1. That it was categorically told to complainant that the complainant will be paid a lease rental of Rs.48 per square feet however till date no lease rental was paid to our complainant per contra a new frivolous demand of maintenance was raised to complainant.
- xvi. That the complainant failed to understand insidious plan was deliberately duped and cheated by the respondents. That, despite asking again and again about the handover of possession and execution of the builder's buyer agreement/conveyance deed the respondents had time and again given false assurances of getting it done soon and letter of possession of unit was issued without any intention of transferring the unit to the complainant.

xvii. That exasperated from the conduct of respondents, complainant had issued a legal notice dated 18.12.2023 inter-alia calling upon the respondents to execute the conveyance deed of the unit in favour of the complainant but to no avail.

C. Relief sought by the complainants:

4. The complainant has sought following relief(s):
 - a. Direct the respondent to handover the possession by the way of executing the conveyance deed of the unit.
 - b. Direct the respondent to pay delayed possession charges/ interest till the delivery of possession.
 - c. Direct the respondent to remove illegal charges.
 - d. Direct the respondent to refund the excess money charged towards maintenance and other charges.
 - e. Direct the respondent to pay assured return in terms of MOU along with interest.
 - f. Direct the respondent pay and liquidate assured lease rental from date of booking of unit.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds.
 - i. That the answering respondent no. 1 i.e., m/s. VSR Infratech Pvt. Ltd. is engaged in the business of construction and development of real estate projects and has carved a niche for itself in the real estate sector.
 - ii. That the complainants are praying for the relief of "assured returns" which is beyond the jurisdiction that this Ld. Authority has been dressed with.

- iii. It is submitted that the issues of the matter had already been adjudged by the Hon'ble Authority in the order dated 07.08.2018 passed in complaint no. 141 of 2018 titled as Brhimjeet vs. M/s. Landmark Apartments Pvt. Ltd, it was held by this Hon'ble Authority that as per the MOU between the parties, the assured returns was not a formal clause with respect to giving or taking possession of the unit and that the builder was not within the purview of the RERA Act.
- iv. That the legislature passed a legislation titled as 'The Banning of Unregulated Deposit Schemes Act, 2019', with the aim and objective to provide for a comprehensive mechanism to ban the unregulated deposit schemes, other than deposits taken in the ordinary course of business, and to protect the interest of depositors and for matters connected therewith or incidental thereto. With the enactment of the BUDS Act, the investment return plan/ assured return/assured rental linked fell within the ambit of "deposit" and "Unregulated Deposit Scheme" under the BUDS Act.
- v. That the definition of "deposit", as provided in the BUDS Act, bars the respondent from making any payment towards assured return or assured rental linked with sale consideration of an immoveable property to its allottees after the enactment of the BUDS Act. It is stated that the assured returns or assured rentals paid by the respondent to its allottees, which is linked with sale consideration of an immoveable property under the said agreement, clearly attracts the definition of "deposit" and falls under the ambit of "Unregulated Deposit Scheme".
- vi. The complainant along with his mother approached the associate company M/s. K S Propmart Pvt. Ltd. for booking of two units in the project being developed by them in Sector 85 Gurugram and submitted an application form for the same. That complainant along with his mother

deposited an amount of Rs. 25,11,606/- in totality towards the booking of units bearing nos. SC-04 and SC-05, 2nd floor. Accordingly, the associate company issued an allotment letter dated 18.11.2016 and allotted unit bearing nos. SC-04 and SC-05. The price of each unit for an area measuring 327.00 sq. ft. was Rs.13,75,035/- plus taxes, duties, levies and other charges. The parties also executed memorandum of understanding dated 31.12.2016 and 31.01.2017 for the aforesaid units.

- vii. That the complainant thereafter approached the respondent and requested for surrendering the old unit no. SC-04 and SC-05 and transfer of the amount paid to associate company towards the unit bearing no. FC-28 in the commercial project being developed by the in the name and style of "68 Avenue". Accordingly, the respondent company facilitated the transfer of funds from the units in the project of the associate company towards the unit no. FC-28 in 68 Avenue post completion of necessary formalities.
- viii. Accordingly, the respondent issued welcome letter and the parties entered into an MOU dated 10.02.2018. The answering respondent provisionally allotted unit no. FC-28 admeasuring 473 Sq. ft. for a total sale consideration of Rs.29,32,349/-plus IDC, IFMS, EDC, ECC, Fire Fighting, Power Back Up charges, GST and such other levies/cesses as may be imposed by the statutory authority and the said fact has been recorded in clause 1 of the MoU dated 19.02.2018.
- ix. The complainant herein had opted for the investment return plan. The actual amount deposited by the complainant towards the unit was Rs.29,42,317/-. Further, the respondent company also credited an amount of Rs.4,41,943/- through credit note towards assured return. It was further agreed that the complainants shall deposit the other charges as per

agreed terms stated in the MOU i.e., Infrastructure Development Charges, Interest Free Maintenance Security, External Development Charges, Electricity connection charges, Fire Fighting Charges, Power Back up Charges, GST and such other levies/cesses as may be imposed by any statutory authority.

- x. That the as per the terms of the MOU, it was also agreed that the respondent will pay an assured return till the application for offer of possession is issued, at the rate of Rs. 84.94/- per sq. ft. of the super area of the premises per month from 10.02.2018. It was agreed that as per clause 3.4 of the MOU, the developer would immediately cease to pay assured return once application of offer of possession is done. Further, the payment of assured return was subject to force majeure clause as provided under clause 6.1 of the MOU.
- xi. It was agreed that as per clause 3.4 of the MOU, the developer would immediately cease to pay assured return once application of offer of possession is done i.e. OC applied. It was agreed that as per clause 3.4 of the MOU, the developer would immediately cease to pay assured return once application of offer of possession is done.
- xii. The respondent company after completing the construction applied for the grant of occupation certificate for the tower B vide application dated 28.03.2018. The occupation certificate was granted by the competent authorities on 02.08.2019 after due verification and inspection. The respondent company offered possession of the unit in question to the complainant vide letter dated 01.01.2019 and requested the complainant to clear his dues of Rs.6,84,351/- after discount of Rs.2,69,000/-. The complainant after being satisfied with the state of development made the payment of Rs. 2,06,711/- vide two cheques for amounts of Rs.2,01,928/-

and Rs.4782/-. The respondent company also credited an amount of Rs.4,41,943/- into the account of the complainant towards assured return as per agreed terms.

- xiii. The respondent company issued no dues qua possession letter dated 01.01.2019 and confirmed the receipt of the payments received from the complainants. It is submitted that it was further agreed between the parties that the allottees would be liable to make payment of other dues/charges as raised by the respondent company from time to time including but not limited to payment of municipal taxes, bulk electricity and maintenance charges.
- xiv. That from a bare perusal of no dues issued qua possession letter dated 01.01.2019, the respondent company had waived off the IFMS ECC, PBC, ACC to the tune of Rs.2,69,115/-. Further, discounts to the tune of Rs 1,099/- as evident from no dues certificate and Rs. 2,69,000/- as evident from the possession letter dated 01.01.2019 were given to the complainant. Thus, the complainant has availed waiver and discounts to the tune of Rs.5,39,214/- from the respondent company.
- xv. That the respondent company had not charged the complainant any maintenance charges as at that point of time it was decided that the same would be adjusted with the assured return amount that was payable to the complainant as per the terms of the MOU. Accordingly, the respondent company adjusted assured return for a period of 11 months amounting to Rs.4,41,943/- vide credit note dated 09.05.2019.
- xvi. That the respondent company had entered into LOI with G4S Security System Pvt. Ltd. on 06.02.2023. The broad terms of the leasing arrangement were duly informed to the complainant in the month of Feb, 2023 itself. That the complainant had duly agreed to the terms of lease and

had collected the copy of the LOI. At that point of time the complainant was duly informed about the charges payable by him towards fit outs, brokerage charges, maintenance, bulk electricity, advance maintenance security. Based on the consent given by into the complainant, the respondent entered into lease deed with G4S Security System Pvt. Ltd. on 14.03.2023. The respondent accordingly issued letter dated 14.03.2023 reiterating the terms of lease with the brand G4S Security System Pvt. Ltd. and requested the complainant to come forward and execute necessary documentation with the lessee.

- xvii. The respondent company also issued email dated 14.03.2023 in this regard. The complainant visited the office of the respondent company and gave his consent to the leasing terms. Accordingly, the complainant submitted an affidavit dated 18.03.2023 in this regard. Further, the complainant was asked to pay charges towards fit-outs, brokerage charges, maintenance, bulk electricity, and advance maintenance security.
- xviii. The respondent company accordingly leased out the unit in question along with the other units to M/s. G4S Security System Pvt. Ltd. The respondent company has handed over the possession of the unit to G4S Security System (India) Pvt. Ltd. Thus, the complainant is only entitled to symbolic/constructive possession of the unit in question.
- xix. The respondent company vide reminder letter dated 22.11.2023 raised the demands payable by the complainant towards maintenance charges, bulk electricity, fit-out charges, brokerage charges and property tax and requested the complainant to remit dues to the tune of Rs.7,69,106.00/-, i.e. as per the agreed terms between the parties but to no avail.
- xx. That the respondent after completing the construction had applied for the issuance of an occupation certificate in the office of the Director General,

Town & Country Planning Department, Haryana vide application dated 28.03.2018 for the said unit. It is relevant to mention here that no shortcoming/infirmary was ever pointed out by the Competent Authorities thus, a deemed OC already exists in favour of the respondent.

- xxi. That the complainant is not entitled to receive the physical possession of the unit, as the unit was booked and allotted for the purpose of leasing, and it was duly agreed between the parties. It is pertinent to mention that as per the clauses of the memorandum of understanding, the complainant was not entitled to the physical possession of the unit and was only entitled to the symbolic /constructive possession.
 - xxii. The complainant visited the office of the respondent company and gave his consent to the leasing terms. Accordingly, the complainant submitted an affidavit dated 18.03.2023 in this regard.
 - xxiii. That all the demands were raised by the respondent as per the MOU however, the complainant failed to make timely payments and was a chronic defaulter. It is submitted that a reminder letter dated 22.11.2023 was also issued to the complainant to clear his outstanding dues.
7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

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

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

E.II Subject-matter jurisdiction

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

Section 11

.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

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

F. Findings on the relief sought by the complainant.

F.I. Direct the respondent to pay assured return in terms of MOU along with an interest.

12. The complainant is seeking unpaid assured returns on monthly basis as per the MOU at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the MOU. Though for some

time, the amount of assured returns was paid but later on, the respondent refused to pay the same by taking a plea that the same is not payable in view of enactment of the Banning of Unregulated Deposit Schemes Act, 2019 (hereinafter referred to as the Act of 2019), citing earlier decision of the authority (*Brhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd., complaint no 141 of 2018*) it was held by the authority that it has no jurisdiction to deal with cases of assured returns. Though in those cases, the issue of assured returns was involved to be paid by the builder to an allottee but at that time, neither the full facts were brought before the authority nor it was argued on behalf of the allottees that on the basis of contractual obligations, the builder is obligated to pay that amount. Thereafter, the authority after detailed hearing and consideration of material facts of the case in *CR/8001/2022 titled as Gaurav Kaushik and anr. Vs. Vatika Ltd.* rejected the objections raised by the respondent with respect to non-payment of assured return due to coming into the force of BUDS Act, 2019. The authority in the said matter very well deliberated 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. So, it can be said that the agreement for assured returns between the promoter and an allottee arises out of the same relationship and is marked by the original agreement for sale. Therefore, it can be said that the authority has complete jurisdiction with respect to assured return cases as the contractual relationship arises out of the agreement for sale only and between the same contracting parties to agreement for sale. Also, the Act of 2016 has no provision for re-writing of contractual obligations between the parties as held by the Hon'ble Bombay

High Court in case *Neelkamal Realtors Suburban Private Limited and Anr. V/s Union of India & Ors., (supra)* as quoted earlier. So, the respondent/builder can't take a plea that there was no contractual obligation to pay the amount of assured returns to the allottee after the Act of 2016 came into force or that a new agreement is being executed with regard to that fact. When there is an obligation of the promoter against an allottee to pay the amount of assured returns, then he can't wriggle out from that situation by taking a plea of the enforcement of Act of 2016, BUDS Act 2019 or any other law. Section 2(4) of the above-mentioned Act defines the word 'deposit' *as an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form.* Further, section 2(4)(I) deals with the exception wherein 2(4)(I)(ii) specifically mention that *deposit does not include an advance received in connection with consideration of an immovable property, under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement.* In the present matter the money was taken by the builder as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period as agreed between the allottee and the builder in terms of buyer's agreement, MoU or addendum executed inter-se parties. Moreover, the developer is also bound by promissory estoppel. As per this doctrine, the view is that if any person has made a promise and the promisee has acted on such promise and altered his

position, then the person/promisor is bound to comply with his or her promise. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint. The Act of 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per section 2(4)(I)(ii) 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.

13. 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.
14. It is not disputed that the respondent is a real estate developer, and it had not obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainants besides initiating penal proceedings. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent is liable to pay assured return to the complainant-allottee in terms of the MOU.
15. 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 assured

return is payable to the allottee as per MOU dated 10.02.2018. The promoter had agreed to pay to the complainant allottee Rs.84.94/- per sq. ft. on monthly basis from 10.02.2018 till the notice of offer of possession. The said clause further provides that it is the obligation of the respondent promoter to pay the assured returns. It is matter of record that the amount of assured return was paid by the respondent promoter for some period of time but later on, the respondent refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019.

16. In the present complaint, the OC/CC has been received by the promoter on 02.08.2019. The authority is of the view that the construction to be deemed to complete upon the receipt of OC/CC is obtained from the concerned authority by the respondent promoter for the said project. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return at the agreed rate i.e., @ Rs.84.94/- per sq. ft. on monthly basis from the date the payment of assured return has not been paid till the date of offer of possession, subsequent to obtaining the Occupation Certificate on 02.08.2019. Thereafter, the respondent shall pay assured rental until the offered space is leased out in accordance with the terms agreed between the parties.

F.II Direct the respondent to handover the possession of the unit.

F.III Direct the respondent to pay the Delayed Possession Charges.

17. The reliefs sought by the complainant is considered collectively, as they are inter-connected and arise from the same cause of action.
18. The Authority further observes that the proposition now before it is whether an allottee who is entitled to receive assured returns even after the expiry of the due date of possession is simultaneously entitled to both assured returns and delayed possession charges?

19. In order to address the above proposition, it is pertinent to consider that the assured return is payable to the Allottee by virtue of a provision in the Memorandum of Understanding (MoU)/Builder Buyer Agreement (BBA), or through an addendum to the MoU/BBA or the Allotment Letter. In the present case, the assured return is payable from 10.02.2018 until the offer of possession of the space. A comparison of the assured return, which is Rs. 40,176/- per month, with the delayed possession charges—approximately Rs. 22,021/- per month as per the proviso to Section 18(1) of the Real Estate (Regulation and Development) Act, 2016—clearly reflects that the assured return is significantly higher.
20. Accordingly, the Authority holds that in cases where the assured return is reasonable and comparable to the delayed possession charges under Section 18 of the Act, and is contractually payable even after the due date of possession until the offer of possession is made, the Allottee shall be entitled to receive either the assured return or the delayed possession charges, whichever is higher, without prejudice to any other remedies available, including compensation. In the present case, the assured return was contractually payable until the offer of possession was made to the Complainant
21. The project is deemed habitable or fit for occupation only upon the grant of the Occupation Certificate by the competent authority.
22. Hence, the Authority directs the Respondent to pay the assured return at the agreed rate of Rs. 84.94/- per sq. ft. per month from the date from which the assured return has not been paid until the date of offer of possession, subsequent to the issuance of the Occupation Certificate on 02.08.2019 by the competent authority.

23. Considering that the subject matter of the allotment pertains to virtual space, the relief sought by the Complainant for physical possession is hereby declined.

F.IV Direct the respondent to remove illegal charges and interest levied.

24. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

F.V Direct the respondent to refund the excess money charged towards maintenance and other charges.

25. The authority observes that maintenance charges are applicable from the time a flat is occupied, its basic motive is to fund operations related to upkeep, maintenance, and upgrade of areas which are not directly under any individual's ownership. Accordingly, the respondent is right in demanding maintenance charges at the rate agreed in the BBA once the offer of possession is made to the complainant.

G. Directions of the authority:

26. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- a. The respondent is directed to pay the assured return at agreed return at the agreed rate of Rs.84.94 Per sq. ft. per month from the date from which assured return has not been paid until the date of offer of possession, after obtaining the Occupation Certificate on 02.08.2019 from the competent authority.
 - b. Thereafter, the respondent shall pay assured rental until the offered space is leased out in accordance with the terms agreed between the parties.
 - c. The respondent is directed to pay the outstanding accrued assured return amount till the date 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 @ 8.85% p.a. till the date of actual realization.
- d. The respondent is directed to execute the conveyance deed in respect of allotted virtual space in favour of complainant within 30 days from the date of this order.
- e. That the subject matter of the allotment pertains to virtual space, the said relief sought by the Complainant for physical possession is hereby declined.
- f. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
27. Complaint stands disposed of.
28. File be consigned to registry.

**(Arun Kumar)**

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.09.2025