

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

Complaint no.: 2499 of 2025
Complaint filed on: 16.05.2025
Date of decision: 08.01.2026

Sh. Bhupender Kumar S/o Sh. Om Prakash
R/o: - Village Bamdoli, District- Gurugram, Haryana

Complainant

Versus

M/s Mascot Buildcon Private Limited.
Regd. office at: -294/1, Vishwakarma Colony, Opp ICD MB
Road, Lal Kuan, New Delhi- 110044
Also, at: - Oodles Residency, R-26, Nehru Enclave, Kalkaji,
New Delhi

Respondent

CORAM:

Shri Phool Singh Saini

Member

APPEARANCE:

Shri Darshan Sharma (Advocate)
Shri Gulshan Sharma (Advocate)

Complainant
Respondent

ORDER

1. This 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 provision of the Act or the Rules and regulations made thereunder or to the allottee 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. No.	Particulars	Details
1.	Name and location of the project	"Oodles Skywalk", Sector 83, Gurugram
2.	Project area	3.03 acres
3.	Nature of the project	Commercial Colony
4.	DTCP license no. and other details	8 of 2013 dated 05.03.2013 Valid up to- 04.03.2017 Licensee- Dharam Singh
5.	RERA Registered/ not registered	Registered vide no. 294 of 2017 dated 13.10.2017 Valid up to- 31.12.2019
6.	Unit no.	R-12B, Second Floor (Page no. 42 of complaint)
7.	Unit area admeasuring (super area)	587.50 sq. ft. (Page no. 42 of complaint)
8.	Allotment letter	18.01.2016 (Page no. 35 of complaint)
9.	Date of execution of buyer's agreement	28.04.2016 (Page no. 39 of complaint)
10.	Date of execution of MoU	20.07.2015 (Page no. 10 of reply)
11.	Possession Clause	38. The "Company" will, based on its present plans and estimates, contemplates to offer possession of said unit to the Allottee(s) within 36 months (refer d. 37 above) of signing of this Agreement or within 36 months from the date of start of construction of the said Building whichever is later with a grace period of 3 months, subject to force majeure events or Governmental action/inaction.
12.	Assured return clause	3. ASSURED RETURN



		<p>3.1 Till the notice for offer of possession is issued the developer shall pay to the allottee an Assured Return at the rate of Rs.81.90/- per sq. ft. of super area of premises per month. After completion of Construction, till tenant is inducted possession is delivered to tenant and the lease commences and rental is received by the allottee from the tenant, the developer shall pay to the allottee(s) an assured return @ Rs.66.65/- per sq. ft. of super area of the premises per month.</p> <p>The assured return shall be subject to tax deduction at source, which shall be payable on or before 15th day of every English calendar month on due basis. (Page no. 25 of complaint)</p>
13.	Date of start of construction	Not on record
14.	Due date of possession	28.07.2019 (Calculated as 36 months from date of execution of BBA as date of start of construction is not available on record along with Grace period of 3 months)
15.	Total sale consideration	Rs.48,11,625/- (Exclusive of applicable taxes and charges) (Page no. 42 of complaint)
16.	Amount paid by the complainant	Rs.49,97,181/- (As alleged by the complainant at page no. 7 of complaint)
17.	Occupation certificate	26.10.2023 (Page no. 68 of reply)
18.	Offer of possession	08.11.2023 (Page no. 71 of complaint)
19.	Reminder letter for payment	18.12.2023 (Page no. 73 of reply)
20.	Assured return amount paid by the respondent to the complainant in terms of MoU	Rs.9,14,221/- (As confirmed by the counsel for respondent during proceeding dated 08.01.2026)



B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the complainant is law abiding citizen of India and belongs to low middle class family. It is pertinent to mention here that at the time of booking the aforesaid Unit, the complainant was residing at Delhi and shifted to his native place at Village Bamdoli, Distt. Gurugram, Haryana.
- II. That being impressed by the advertisement and rosy pictures shown by the respondent through various mode of communication including but not limited to news-papers and pamphlets the complainant came to know that the respondent is developing a commercial complex consisting of Retail Unit/Office Space/Serviced Apartments under the name and style of "Oodles Skywalk" in the revenue estate of Village Sihi, Sector 83, Gurugram. It was further communicated that the project is RERA registered vide registration number 294 of 2017.
- III. That the complainant applied for allotment of a retail unit having super area of 587.5 sq. ft on Second Floor "R-12B" in the said Project and a MOU was executed between the parties by submitting a cheque No.000109 dated 13.07.2015 of Rs. 49,97,181/- by the complainant to the respondent. It is submitted that the complainant is not having the knowledge of law and on believing upon the executives of the respondent has signed the MOU at the instructions of the executive appointed by the respondent believing everything to be perfect in all manners. That the complainant was allotted a retail unit bearing number R-12B on Second Floor having super area 587.5 sq. ft in the said project.
- IV. That the respondent executed a printed one-sided buyer's agreement in favour of the complainant on 28.04.2016. The agreement is contrary to the provisions of the Act, 2016. It is not out of place to mention that all the

expenses toward execution of buyer's agreement was borne by the complainant. The respondent has charged more amount from the complainant than actual expenses incurred for registration. It is further submitted that as per clause 38 of the agreement, the respondent shall have to deliver the possession of the said unit within 36 months with a grace period of 3 months, meaning thereby the respondent shall have to deliver the possession in April 2019 to the complainant but after passing of more than nine years, the respondent is totally failed to comply the terms and conditions of the builder buyer agreement.

- V. That since the complainant has paid the entire amount of the aforesaid unit, therefore, as per Article 3 of MOU it was agreed between the parties that till the notice for offer of possession is issued the developer shall pay to the allottee an assured return at the rate of Rs.81.90 per sq. ft of super area of premises per month. After completion of construction, till tenant is inducted possession is delivered to tenant and the lease commences and rental is received by the allottee from the tenant, the developer shall pay to the allottee an assured return @ Rs.66.65/- of super area of premises per month, consequently the respondent has paid a sum of Rs.43,305/- to the complainant for 25 months only while the complainant is liable to receive the assured return from the date of execution of BBA till handing over the possession of the unit, hence the respondent are liable to pay the balance amount due from February 2018 to till the date of delivery of the possession of the unit. Thus, a total sum of Rs.37,67,535/- are still due till the month of April 2025.
- VI. That the possession of the unit was to be rendered/handed over by the respondent on or before April 2019 including grace period in terms of clause 38 of the Agreement. That as and when any member from the family



of the complainant enquired about the completion of the construction of the building and delivery of possession, the officials of the respondent became furious upon him and stated that don't tried to cudgel brain as and when the construction of the building will complete, we will inform you.

- VII. That the complainant has already paid a sum of Rs.49,97,181/- to the respondent one time which is more than the basic sale price of the unit but till date neither the construction work of the building is complete nor offer the possession of the unit/shop nor pay the complete assured return by the respondent to the complainant. Due to non-performance of its obligations and duties the complainant is going through mental pain and agony.
- VIII. That the entire sequential of events leading to the instant complaint establish the malafide intentions of the respondent to defraud the complainant of his hard-earned money. In this hue, it is reverentially submitted that such conduct on the part of the Respondent is tantamount to breach of the contractual obligations of the Agreement. Ergo, the Complainant is entitled to exercise its right conferred by the Act, 2016 under section 31 read with section 19(3) read with section 18 on in alternative section 19(4) read with section 18 of the Act.
- IX. That due to the acts of the above and terms and conditions of the Agreement, the Complainant has been unnecessarily harassed mentally as well as financially, therefore the respondent is liable to compensate the complainant on account of aforesaid act of unfair trade practice.
- X. That there are clear unfair trade practices and breach of contract and deficiency in services of the respondent and much more a smell of playing fraud with the complainant and other allottees and is prima facie clear on



the part of the respondent which makes them liable under the provisions of the Act, 2016.

- XI. That the complainant do not want to withdraw himself from the project. The respondent has not fulfilled its obligations provided under the provisions of the Act, 2016 and therefore, the respondent is obligated to deduct the illegal and unfair charges and to pay the balance assured return with interest at the prescribed rate for every month of delay till the actual handing over of the possession due to act and conduct of the respondent.
- XII. That the present complaint has not been filed by the complainant for seeking compensation, without prejudice, complainant reserve the right to file a complaint for grant of compensation as well as the assured return with the adjudicating officer.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):-
- i. Direct the respondent to pay interest for every month of delay at the prevailing rates of interest upon the assured return pending till date, as per provisions of the Act, 2016.
 - ii. To direct the respondent to deliver the possession of the unit allotted in favour of the complainant after deducting the illegal charges.
 - iii. To provide the detailed calculations of area.
 - iv. To direct the respondent to pay assured return amount of interest on the amount paid by the complainant at the prescribed Rs.37,67,535/- from Feb 2019 to April 2025 and further till the actual date of possession of the unit in terms of agreement/MOU on every month along with arrears as per the provisions of the Act, 2016.
 - v. The complainant is also entitled to any other relief to which he is found entitled by this Authority.



5. On the date of hearing, the authority explained to the respondent/promoter about the contravention 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 respondent

6. The respondent has contested the complaint and made following submissions: -
- I. That with respect to the project, it is further stated that there existed an agreement dated 29.10.2010 between the original land owner Shri Dharam Singh and Home Town Properties Pvt. Ltd. related to constructing the said commercial project and based upon such collaboration, the original landowner along with M/s Home Town Properties Pvt. Ltd. had received a license bearing no. 08 of 2013 from the Director General, Town & Country Planning, Haryana, Chandigarh for constructing the said commercial project on the said land. Since, M/s Home Town Properties Pvt. Ltd. has already applied for and done the work with Dharam Singh regarding collaboration, M/s Home Town Properties Pvt. Ltd. has informed M/s Mascot Buildcon Pvt. Ltd. to develop the project because in both the Companies, Directors were common and both the companies are sisters concern. Thereafter, M/s Home Town Properties Pvt. Ltd. has requested M/s Mascot Buildcon Pvt. Ltd. to give publicity about the near future of the said project, on which, M/s Mascot Buildcon Pvt. Ltd. has instructed to provisionally publicity about the said project. The respondent accordingly seeing the viability of the project approached before the respondent and booked the unit in question and it is only after understanding about the project, the complainant himself submitted the application form after reading it and it is clear from the said application form that the respondent is



investing in the said upcoming project as per his free Wish and Will and there was no coercion on the respondent and according to the provisional map/drawing, the Respondent has booked the shop in question.

- II. On 20.7.2015, an MoU for commercial Space for Unit bearing no. R-12B, having super area of 587.50 sq. ft. with sale consideration of Rs.44,18,000/-excluding other charges were executed between the complainant and the respondent company.
- III. That, thereafter, on 28.4.2016, a Space Buyer Agreement (SBA), which is the final document relating to unit bearing no. R-12B was executed between the complainant and the respondent, wherein sale consideration of Rs.48,11,625/- was agreed to be paid by the complainant to the respondent. In the said agreement, it was clearly mentioned that all previous agreements /MoU executed earlier were superseded by this final agreement, relevant clauses of which are reproduced for ready perusal of the Authority.

Clause 79 and 83 of the Agreement

"79. It is specifically understood by the Allottee (s) that upon execution, the terms and conditions as set out in the Agreement shall supersede the terms and conditions as set out in the application and/or any other document, mail or correspondence in this regard.

83. That this Agreement which has been titled as "Space Buyer's Agreement" constitutes the entire Agreement between the parties and revokes and supersedes all previous discussions /correspondence, application and Agreement between the parties, if any, concerning the matters covered herein whether written, oral or implied. This Agreement shall not be changed or modified except by written amendments duly agreed by the parties. The terms and conditions and various provisions embodied in this Agreement shall be incorporated in the sale deed and shall form part thereof."

- IV. Thus, in view of aforesaid, it cannot be said that complainants are liable for any assured return after execution of SBA, whereby all previous

discussions/correspondence, application and agreement between the parties stands revoked and superseded, which resulted in stop payment of "assured return" to the complainant by the respondent company and thus, it cannot be said that respondent company has been defaulting in paying the same. Moreover, it is respectfully submitted that in view of dictum laid down in case no **7362/2022** in **Monika Devi VS Mascot Buildcon Pvt. Ltd.**, the present respondent is not liable to get the assured return as the SBA, which is the final document between the parties, supersedes and extinguished the MoU.

- V. Thus, after execution of SBA, the complainant was not entitled for any "assured return" as agreed by himself through execution of SBA. However, it is relevant to state here that though the "assured return" was stopped after signing of SBA dated 28.4.2016, however, by that time, an excess amount of Rs.9,14,222/- was paid to the complainant in the form of "assured return", whereas it is a matter of record that till then the complainant was paid Rs.13,16,222/- the "assured return" as per MoU.
- VI. It is relevant to mention here that on 26.10.2023, the respondent received the occupation certificate from the department. Thereafter, on 08.11.2023, the respondent sent a demand letter demanding the outstanding dues of Rs.5,14,695/- with due date 08.12.2023 from the complainant. Despite receiving aforesaid reminder, the complainant failed to clear the said dues, which now till date accumulated to Rs.9,73,298/-, the total dues excluding other charges as per SBA.
- VII. Thereafter, instead of paying/clearing the dues relating to Unit concerned, the complainant filed present false and fictitious complaint

before this Authority, whereas it is a matter of fact that complainant herein is the defaulter.

- VIII. It is a matter of record that SBA was executed on 05.04.2016 after fulfilling all the formalities and procedures by the respondent. The complainant, being literate, after reading and understanding the terms and conditions only in the year 2016, executed/sign the SBA with the respondent, thereby clearly understanding that the period of 36 months, for giving of offer of possession would be commenced as per the terms of SBA, more so, when the MOU stands extinguished /superseded after execution of SBA between the parties.
- IX. Moreover, it has been held in numerous judgments rendered by the Hon'ble High Court of Delhi, Punjab and Haryana as well as Hon'ble Supreme Court that the contract superseding previous MOU shall stand and prevail and if the terms of the SBA executed between the parties is not denied (which is admitted in the present case, the terms of SA would supersede the MOU, according to which, the possession shall be given from the date of execution of SBA and not from the date of execution of MOU. The law is well settled on this aspect, which shall be dealt with at the time of argument of the present case.
- X. It is respectfully submitted that, firstly, the complainant is not an illiterate person as they had signed/executed the SBA, only after reading and understanding the terms and conditions as well as covenants of SBA, clearly specifying each and every detail of the unit concerned since its inception till the execution of final document i.e., sale deed; Secondly, assuming without conceding, if it is believed that complainant had signed/executed SBA under any coercion/duress, then why immediately after execution of SBA, they have not lodged any



complaint with any Police Station regarding this and/or written any mail/letter to this effect to the Company, saying that the SBA was signed under coercion/duress and same is not binding on them, being apparently containing one-sided clauses in favour of respondent no. 1-builder. Neither, any single complaint in this regard had been lodged before any Police Station by the complainant, nor before the respondent through any mail/letter by the complainant. Thus, after signing/executing the SBA in the year 2016, the complainant at this belated stage, after nine (9) years, cannot approbate and reprobate and take this stand, which is not feasible and practical and not maintainable before this Authority. Moreover, the contents asserted are vague, which have no relevance, after passing of various dictums by the Hon'ble Courts, which declared the payment of "assured return" as invalid and illegal in the eyes of law. The court including SEBI, declared the "assured return" payment by the promoter/builder to allottee "illegal" and directed them not to proceed or adopt such practice in future by the promoter/builder and thus specifically, in lieu of such directions, the Promoter has to abide by the guidelines of the SEBI and the Courts and has to stop the "assured return" payment.

- XI. It is further respectfully submitted that, in fact, with respect to "assured return" the Securities & Exchange Board of India has held the same illegal transactions; thus the "assured return" payment was stopped, seeing the guidelines issued by SEBI, India. Such context /order is reproduced hereinbelow: -

"Earlier Securities & Exchanges Board of India (SEBI) forwarded an application bearing no 604/1/2020 dated 10/06/2020 vide which the matter was referred for appropriate action by authority since the allegations raised therein related to real estate transactions. Pursuant





to the same, a complaint bearing no. 2623/2020 titles as Monica Ahluwalia Vs. Space Towers Pvt. Ltd. was registered."

- XII. It is important to understand whether assured returns are payable at all. In this context reference is drawn towards the preamble to the Securities & Exchanges Board of India Act, 1992 (SEBI Act) which describes the intention behind the legislature and provides as under: -

"...to protect the interest of investors in securities and to promote the development of and to regulate the securities market and for matters connected therewith or incidental thereto" and introduced the definition of collective investment Scheme (CIS) which meant that any scheme or arrangement made or offered by any person or entities under which the contributions, or payments made by the investors, are pooled and utilized with a view to receive profits, income, produce or property, and is managed on behalf of the investors where investors do not have day to day control over the management and operation of such scheme or arrangement is a CIS. Assured return schemes were not regulated under the SEBI act until 2013-14 and were not entirely treated as illegal. Such scheme came to the forefront and caught the attention of SEBI/ when it received complaint from a group of allottee complaining that the company was collecting money from various investors and offering properties against it with assured return, Securities & Stamp; Exchanges Board of India (SEBI) asked a company name Viswas Real Estates and Infrastructures India Pvt. Ltd. to abstain from continuing its business activity and stated that the scheme falls under the definition of CIS which requires registration as per SEBI Act. Since then, the definition of CIS has undergone amendments per se subsequent complaints and various judgments passed by SEBI. CIS is defined under section 11AA of SEBI Act which was inserted by the SEBI (Amendment) Act 1999 w.e.f. 22/02/2020 and the section has been amended periodically.

- XIII. In the light of the above, it is humbly prayed that present complaint is a vexatious and frivolous one, just to gain the unjust enrichment from the respondents and to anyhow blame the reputed builders like respondent, who have been constructing the project as per the norms and in consonance with RERA Act, more so, when the complainant is the defaulter in the present case and not making any due payments.
- XIV. Moreover, when it was not the pleaded case herein by the complainant that the documents executed were part of any fraud or coercion by the respondent, which have been duly signed/executed by the

complainant, after reading the covenants, thus, they cannot approbate and reprobate at this stage, especially when after having got the registration number with RERA, the respondent have given the date of completion as per RERA Norms before the Authorities concerned, which has to be impliedly applicable to all the investors after the registration of the project with the Authorities under RERA Act. Thus, no default, as alleged, by the complainant can be attributable upon the respondent, therefore, the present application/complaint filed by the complainant before this Authority is liable to be dismissed with costs, being fictitious and frivolous one.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the 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, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has completed territorial jurisdiction to deal with the present complaint.

E. II Subject-matter Jurisdiction:



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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the 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 interest for every month of delay at the prevailing rates of interest upon the assured return pending till date, as per provisions of the Act, 2016.
- F. II** Direct the respondent to pay assured return amount of interest on the amount paid by the complainant at the prescribed Rs.37,67,535/- from Feb 2019 to April 2025 and further till the actual date of possession of the unit in terms of agreement/MOU on every month along with arrears as per the provisions of the Act, 2016.

12. The above-mentioned reliefs are interrelated accordingly, the same are being taken up together for adjudication. The complainant has sought the delay possession charges and also sought assured return on monthly basis as per the MoU dated 20.07.2015.
13. Upon consideration of the documents available on record and submissions made by both parties. The Authority observes that, the complainant-allottee



had applied for a booking of office space in project namely "Oodles Skywalk" being developed by respondent and entered into MoU (memorandum of understanding) on 20.07.2015, wherein the respondent has agreed to allotted a shop bearing no. R-12B, Second Floor, area admeasuring 587.50 sq. ft. super area for a total consideration of Rs.48,11,625/- (Exclusive of applicable taxes and charges) which the complainant has paid an amount of Rs.49,97,181/- more than the sale consideration till July, 2015 at the time of entering the MoU with respondent. Further as per clause 3.1 of MoU dated 20.07.2015, till the notice for offer of possession is issued by the developer shall pay to the allottee an Assured Return at the rate of Rs.81.90/- per sq. ft. of super area of premises per month. The clause 3.1 is reproduced for reference:

*3.1 Till the notice for offer of possession is issued **the developer shall pay to the allottee an Assured Return at the rate of Rs.81.90/- per sq. ft. of super area of premises per month. After completion of Construction, till tenant is inducted possession is delivered to tenant and the lease commences and rental is received by the allottee from the tenant, the developer shall pay to the allottee(s) an assured return @ Rs.66.65/- per sq. ft. of super area of the premises per month.***

The assured return shall be subject to tax deduction at source, which shall be payable on or before 15th day of every English calendar month on due basis.

14. Thereafter, on 18.01.2016, vide an allotment letter, the complainant-allottee was allotted a unit/office space bearing no. R-12B Second floor, in Tower-Food court admeasuring 587.50 sq. ft. super area in project namely "Oodles Skywalk" being developed by the respondent/promoter. Subsequently, the complainant-allottee and respondent had entered into buyer's agreement on 28.04.2016.
15. It is pleaded on behalf of the complainant that the respondent has not complied with the terms and condition of the MoU. Though before signing of space buyer agreement, the amount of assured return was paid but later on the respondent has stop the arrears of assured return as per clause 79 read



with clause 83 of the space buyer agreement. In the present complaint, the complainant has sought pending assured return as per MoU dated 20.07.2015.

16. Further, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso 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."*

[Emphasis supplied]

17. As per clause 38 of the space buyer agreement provides the time period of handing over of possession and the same is reproduced below: -

38. The "Company" will, based on its present plans and estimates, contemplates to offer possession of said unit to the Allottee(s) within 36 months (refer d. 37 above) of signing of this Agreement or within 36 months from the date of start of construction of the said Building whichever is later with a grace period of 3 months, subject to force majeure events or Governmental action/inaction.

[Emphasis supplied]

18. The Authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kind of the terms and conditions of this agreement and the complainant not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfillment formalities and documentations etc. as prescribed by the promoter may make the possession

clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.

19. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. The space buyer agreement lays down the terms and that govern the sale of different kinds of properties like residentials, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted buyer's agreement which would thereby protect the rights of both the builders and buyers in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the rights of the buyer/allottees in case of delay in possession of the unit.
20. By virtue of clause 38 of the space buyer's agreement executed between the parties, the possession of the subject unit was to be delivered within a period of 36 months of the agreement or within 36 months from the date of start of construction of the said building whichever is later with a grace period of another 3 months, which is not allowed in the present case. The date of construction of the said building is not available on records so the due date is calculated from the date of agreement which comes out to be 28.07.2019. 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?
21. To answer the above proposition, it is worthwhile to consider that the MOU was executed between the parties on 20.07.2015 and as per clause 3 of the MOU the respondent is liable to pay assured return till the date of offer of



possession, but subsequently on 28.04.2016 the space buyer's agreement was executed. It is a matter of fact that the complainant has signed the buyer's agreement with his own free will and consent and as per clause 79 and 83 of the buyer's agreement dated 28.04.2016, the "assured return" is not payable to the complainant as the MOU stands extinguished. Clause 79 and clause 83 of the space buyer's agreement is reproduced hereunder for ready reference:

"79. It is specifically understood by the Allottee(s) that upon execution, the terms and conditions as set out in the Agreement shall supersede the terms and conditions as set out in the application and/or any other document, mail or correspondence in this regard.

83. That this Agreement which has been titled as "Space Buyer's Agreement" constitutes the entire Agreement between the parties and revokes and supersedes all previous discussions/correspondence, application and agreement between the parties, if any, concerning the matters covered herein whether written, oral or implied. This Agreement shall not be changed or modified except by written amendments duly agreed by the parties. The terms and conditions and various provisions embodied in this Agreement shall be incorporated in the sale deed and shall form part thereof."

22. Further section 62 of the Indian Contract Act, 1872 is reproduced hereunder:

"62. Effect of novation, rescission, and alteration of contract

If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract, need not be performed"

23. Therefore, as per clause 79 and clause 83 of the space buyer's agreement and section 62 of the Indian contract Act, 1872 the complainant is not liable to receive the amount on account of assured return as agreed in the MoU dated 20.07.2015, as the space buyer's agreement dated 28.04.2016, supersedes all previous documents and agreement executed between the parties.

24. **Admissibility of delay possession charges at prescribed rate of interest:**

The complainant is seeking delay possession charges. Proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoters, 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, *ibid*. 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.

25. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid* 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.
26. 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., 08.01.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.
27. The definition of term 'interest' as defined under Section 2(z a) 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;"

28. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
29. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent is in contravention of the Section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement dated 25.02.2020. By virtue of clause 38 of buyer's agreement executed between the parties, the possession of the subject unit to be delivered by 12.08.2022 as delineated hereinabove. The respondent has obtained the occupation certificate from the concerned competent authority on 16.12.2023 in respect of the subject unit and thereafter, possession of the subject unit was to be delivered within a period of 36 months of the signing of this agreement or within 36 months from the date of start of construction of the said building whichever is later with a grace period of another 3 months, which is not allowed in the present complaint. The date of start of construction of the said building is not available on record so the due date is calculated from the date of signing of the agreement which comes out to be 28.07.2019.
30. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 26.10.2023. However, the respondent offered the possession of the unit in question to the complainant only on 08.11.2023, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, he should be given 2 months' time from the date of offer of



possession. These 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 28.07.2019 till the expiry of two months from the date of offer of possession (08.11.2023) plus two months (i.e., 08.01.2024).

31. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at rate of the prescribed interest @ 10.80% p.a. w.e.f. 28.07.2019 till the date of offer of possession (08.11.2023) plus two months i.e., 08.01.2024 or actual handing over of possession, whichever is earlier as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.

F.III Direct the respondent to deliver the possession of the unit allotted in favour of the complainant after deducting the illegal charges.

32. The complainant has sought the direction for handing over the possession of the allotted unit after deducting illegal charges. During proceeding dated 08.01.2026, the counsel for the respondent stated that the complainant shall take the physical possession of the allotted unit on depositing the outstanding demands raised by it.
33. In view of the above, the respondent is directed to issue a revised statement of account after adjustment of delay possession charges within a period of 30 days from the date of this order. Further, the respondent shall not charge anything which is not part of the space buyer's agreement. The complainant is



also directed to pay the outstanding dues if any after adjustment of delay possession charges and take the physical possession of the allotted unit.

F. IV To provide the detailed calculations of area.

34. As per section 19(1) of Act of 2016, the allottee shall be entitled to obtain information relating to sanctioned plans, layout plans along with specifications approved by the competent authority or any such information provided in this Act or the rules and regulations or any such information relating to the agreement for sale executed between the parties. Therefore, the respondent promoter is directed to provide the area calculation relating to super area, loading and carpet area to the complainant.

G. Directions of the Authority

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

- i. The respondent is directed pay interest at the prescribed rate i.e., 10.80% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 28.07.2019 till the date of offer of possession (08.11.2023) plus two months i.e. up to 08.01.2024 or actual handing over of possession, to the complainant whichever is earlier as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*. The respondent is directed to pay arrears of interest accrued so far within 90 days from the date of order of this order as per Rule 16(2) of the Rules, *ibid*.
- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. The respondent shall handover the physical possession of the allotted unit as per specification of the buyer's agreement entered into between the parties, after



obtaining of occupation certificate from the competent authority in terms of Section 11(4)(b) read with Section 17 of the Act, 2016.

- iii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act, 2016.
- iv. The respondent shall execute the conveyance deed of the allotted unit within a period of 3 months upon obtaining occupation certificate from the competent authority, upon payment of outstanding dues and requisite stamp duty by the complainant as per norms of the state government as per Section 17 of the Act, 2016.
- v. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. The respondent is not entitled to charge any amount against holding charges from the complainant /allottee at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

36. Complaint as well as applications, if any, stand disposed off accordingly.

37. File be consigned to registry

Dated: 08.01.2026



(Phool Singh Saini)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram