

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

Complaint no.: 3409 of 2024
Date of filing of complaint: 09.08.2024
Date of Order: 23.12.2025

Lakhwant Singh
R/o: - Village-Mungo, Patiala, Punjab-147202

Complainant

Versus

M/s KS Propmart Private Limited.
Regd. office at: A-793, 1st floor, G.D. Colony,
Mayur Vihar Phase III, Near Hanuman Mandir,
New Delhi-110096
Corporate office at: Plot No. 14, Ground
Floor, Sector- 44, Institutional Area,
Gurugram- 122003 Haryana

Respondent

CORAM:

Shri Arun Kumar
Shri Phool Singh Saini

**Chairman
Member**

APPEARANCE:

Shri Manul Mitra
None

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 of the project	"Park Street", Sector 85, Gurugram
2.	Area of project	2.85 acres
3.	Nature of project	Commercial
4.	DTCP license no. and validity	100 of 2013 dated 02.12.2013 valid up to 01.12.2019
5.	Name of licensee	KS Propmart Pvt. Ltd.
6.	Unit and floor no.	G-36, Ground floor (As per page no. 28 of complaint)
7.	Area admeasuring	234.66 sq. ft. (Super area) (As per page no. 28 of complaint)
8.	Date of execution of memorandum of understanding	01.07.2018 (As per page no. 25 of the complaint)
9.	Date of allotment	16.09.2019 (As per page no. 39 of the complaint)
10.	Total sale consideration	Rs.28,94,531/- (As per page no. 28 of the complaint)
11.	Amount paid by the complainant	Rs.23,86,000/- [As per page no. 29 of the complaint]
12.	Assured return clause	3. Assured Return 3.1.1 It is hereby agreed and undertaken by the developer that from the date of this MOU till notice for offer of possession is issued, the developer shall pay to the allottee an assured return at the rate of Rs.116.95/- per sq. ft. of super area of premises per month. The assured return shall be subject to tax deduction at source, which shall be payable on due date of every English Calender month on due basis. (As per page no. 31 of the complaint)
13.	Date of execution of space buyer's agreement	Not executed

14.	Possession clause	N.A
15.	Due date of possession (As per <i>Fortune Infrastructure and Ors. Vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i>)	16.09.2022 (Note: Due date to be calculated 3 years from the date of allotment i.e., 16.09.2019 in absence of buyer's agreement)
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That the complainant i.e., Mr. Lakhwant Singh is a permanent resident of Village Mungo, Patiala, Punjab and is a peace loving and law-abiding citizen of India.
- II. That the respondent apprised the complainant about developing and setting up commercial towers/colony by the name of "Park Street" over an area of 2.85 acres situated at Village Badha, Sector-85, Gurugram.
- III. That the complainant showed his interest in buying/purchasing a unit in the aforementioned commercial colony/towers being developed by the respondent.
- IV. That the respondent had given false verbal assurances and promises to deliver the possession of the unit within 03 years as well as to give monthly assured return to the complainant.
- V. That the complainant believing and falling for the false assurances of the respondent agreed to buy a unit in the aforementioned project and the respondent had asked the complainant to pay approximately 80% of the total sale consideration of the unit even before entering into a written agreement.
- VI. That thereafter on 01.07.2018, the respondent and the complainant entered into a memorandum of understanding dated 01.07.2018 for

unit no. G-36 on the ground floor admeasuring a tentative super area of 234.66 sq. ft. for a total agreed consideration of Rs.28,94,531/- in Park Street, Sector-85, Gurugram.

- VII. That according to clause 1.4 of the above-mentioned MoU, the complainant had paid a total of Rs. 23,86,000/- to the respondent including Rs. 2,55,642/- towards GST against his booking of the said unit. On 13.07.2018, the respondent issued a receipt dated 13.07.2018 in favour of the complainant for having received Rs.23,84,000/-.
- VIII. That according to clause 3.1 of the above-mentioned MOU dated 01.07.2018, the respondent had to give monthly assured return of approximately Rs.27,443/- per month to the complainant w.e.f. 01.07.2018 till the notice for offer of possession.
- IX. That initially the respondent was complying with its part of paying the monthly assured return to the complainant from 01.07.2018 till March, 2020 but stopped paying assured return thereafter.
- X. That even after repeated requests from the complainant from time to time to clear the monthly assured return, the respondent was adamant in ignoring the complainant's request and refused to pay any pending or further instalment against monthly assured return.
- XI. That till date, i.e., July 2024, assured return of 51 months amounting to Rs. 13,99,083/- is pending which the respondent owes to the complainant.
- XII. That on 16.09.2019, the respondent issued an allotment letter dated 16.09.2019 for unit no. G-36 admeasuring a tentative super area of 234.66 sq. ft.
- XIII. That according to clause 3.1 read with clause 3.3 of the said MOU, the respondent shall only be ceased to pay monthly assured return to the complainant only after issuing the offer of possession. The said project

is far from being completed and the respondent has not yet applied for OC to the competent authority.

- XIV. That almost five years have passed by and that even after taking Rs.23,86,000/- being inclusive of Rs.2,55,642/- towards GST, the respondent has failed to comply with its obligation to pay monthly assured return to the complainant, complete the project, apply for OC and has also failed to execute a space buyer's agreement with the complainant till date.
- XV. That the complainant had time and again requested the respondent to pay monthly assured return to the complainant in accordance with the said MoU and had put multiple efforts and approached the respondent for the same, but all the efforts made by the complainant went in vain as after receiving money from the complainant, the respondent started ignoring the complainant and has neither completed the project, nor applied for OC, nor executed a space buyer's agreement, nor the respondent has paid monthly assured return to the complainant for 40 months causing immense mental trauma and financial loss to the complainant.
- XVI. That according to the application to authority for registration of real estate project submitted by the respondent to the Hon'ble Authority, revised date of completion of the said project is 31.12.2021 which makes it crystal clear to understand and deem that the project was supposed to be completed till 31.12.2021, although the complainant was shocked to know that the project is far from being completed.
- XVII. That taking advantage of its dominant position in the real estate market, the respondent has clearly refused to pay any pending and/or forthcoming monthly assured return as well as to give possession to the complainant leaving the complainant with no other option but to approach the Hon'ble Authority.

- XVIII. That the said project has been listed as a lapsed project and the promoter is still promoting the said project which in itself is contradictory and in violation of the Act of 2016.
- XIX. That the complainant being completely unaware of such fraudulent and lucrative schemes being adopted by all the real estate giants/builders to usurp and dupe innocent public of their hard-earned money, believed the fake and false assurances, and promises of the respondent which has kept their hard-earned money at stake.
- XX. That the respondent since the very inception represented a statement which was never intended to be culminated in its true terms and spirit thereby deceiving the complainant which now a days has become a standard modus operandi of the real estate giants to usurp the hard-earned money of common people.
- XXI. That since the respondent has failed to comply with the terms of the MOU dated 01.07.2018 and has not given assured return for 51 months to the complainant, the complainant in exercise of his right under Section 18 of the Act of 2016 wishes to not withdraw from the project and therefore shall be paid interest for every month of delay till the handing over of the possession, at the prescribed rate.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- i. Direct the respondent to make legal and complete offer of possession as well as registry of the said unit to the complainant at the earliest after receiving necessary government licenses and approvals from the competent authority.
 - ii. Direct the respondent to pay the pending assured return of approximately Rs.27,433/- per month which is due for 51 months. (April 2020 till July 2024) i.e., Rs.13,99,083/-.

- iii. Direct the respondent to pay future monthly assured return till notice for offer of possession (according to Clause 3.1 of the MOU).
 - iv. Direct the respondent pay interest at the prescribed rate towards delayed possession charges.
 - v. Direct the respondent to pay an additional amount of Rs.1,00,000/- to the complainant towards litigation cost.
 - vi. Direct the respondent to waive off any maintenance charges, cost of parking or any other charges that the respondent may have charged since the respondent has not offered possession till date.
5. The authority issued a notice dated 09.08.2023 of the complaint to the respondents by speed post and also on the given email address at prempratik25@gmail.com, INFOKSPROP MART@gmail.com and mitramanul@gmail.com for filing reply within 4 weeks. The delivery reports have been placed in the file. The counsel for the respondent put in appearance on 14.11.2024 but did not file the reply to the complaint within the stipulated period despite given ample opportunities vide proceedings of the day dated 14.11.2024, 27.02.2025, 15.05.2025 and 07.08.2025. It shows that the respondent was intentionally delaying the proceedings by avoiding filing of written reply. Therefore, in view of above, vide order dated 16.10.2025, the defence of the respondent was struck off.
6. 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 complainant.

D. Jurisdiction of the Authority:

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

D.I Territorial Jurisdiction

8. 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 complete territorial jurisdiction to deal with the present complaint.

D.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)(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.

E. Findings on the relief sought by the complainant:

E.I Direct the respondent to pay the pending assured return of approximately Rs.27,433/- per month which is due for 51 months. (April 2020 till July 2024) i.e., Rs.13,99,083/-.

E.II Direct the respondent to pay future monthly assured return till notice for offer of possession (according to Clause 3.1 of the MOU).

11. The complainant is seeking unpaid assured returns on monthly basis as per the MOU dated 01.07.2018 at the rates mentioned therein. It is pleaded by the complainant that the respondent has not complied with the terms and

conditions of the said MoU. Though for some time, an amount of assured returns was paid but later on, the respondent refused to pay the same. In **Gaurav Kaushik and anr. Vs. Vatika Ltd.** the authority has held that when the payment of assured returns is part and parcel of memorandum of understanding or buyer's agreement (maybe there is a clause in that document or by way of addendum or terms and conditions of the allotment of a unit), then the promoter is liable to pay that amount as agreed upon.

12. A memorandum of understanding was executed between the complainant and the respondent on 01.07.2018 by which a specific unit bearing no. G-36 has been allotted to the complainant for sale consideration of Rs.28,94,531/-. Although, there is no specific due date for handing over of possession is given in the MOU but as per clause 3.1 of the MOU, the respondent has promised an amount of Rs.116.95/- per sq. ft. of super area per month in the form of assured return till the offer of possession. The definition of "allottee" as per section 2(d) of the Act of 2016 provides that an allottee includes a person to whom a plot, apartment or building has been allotted, sold or otherwise transferred by the promoter. Section 2(d) of the Act of 2016 has been reproduced for ready reference:

2(d)

"allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

Keeping in view the above-mentioned facts and the definition of allottee as per Act of 2016, it can be said that the complainant is an allottee.

13. The money was taken by the promoter 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 promoter promised certain amount by way of assured return for a certain period. So, on his failure to fulfil that commitment, the

allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.

14. The promoter is liable to pay that amount as agreed upon. Moreover, an agreement/MoU 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 said memorandum of understanding.
15. In the present complaint, the assured return was payable as per clause 3 of MoU, which is reproduced below for the ready reference:

3. Assured Return

3.1 It is hereby agreed and undertaken by the developer that from the date of this MOU till notice for offer of possession is issued, the developer shall pay to the allottee an assured return at the rate of Rs.116.95/- per sq. ft. of super area of premises per month. The assured return shall be subject to tax deduction at source, which shall be payable on due date of every English Calender month on due basis.

Thus, the assured return was payable @ Rs.116.95 per sq. ft. of super area per month i.e., Rs.27,443/- per month w.e.f. 01.07.2018, till the possession of the said unit is handed over to the complainant.

16. In light of the reasons mentioned above, the authority is of the view that as per the MoU dated 01.07.2018, it was obligation on the part of the respondent to pay the assured return. It is necessary to mention here that the respondent has failed to fulfil its obligation as agreed inter se both the parties in MoU dated 01.07.2018. Accordingly, in the interest of natural justice, the liability of the respondent to pay assured return as per MoU is still continuing. The respondent has paid assured return to the complainant till March 2020. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return in terms of clause 3 of MoU dated 01.07.2018 at the agreed rate i.e., @ Rs.27,443/-per month from the date the payment of assured return has not been paid i.e., April 2020 till the handing over of possession after obtaining the occupation certificate.

E.III Direct the respondent to make legal and complete offer of possession as well as registry of the said unit to the complainant at the earliest after receiving necessary government licenses and approvals from the competent authority.

E.IV Direct the respondent pay interest at the prescribed rate towards delayed possession charges.

17. The above sought relief(s) by the complainant are taken together being inter-connected.
18. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

19. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
20. 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., 23.12.2025 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.
21. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the

promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

22. The authority further observes that now, the proposition before the Authority whether an allottee who is getting/entitled for assured return even after expiry of the due date of possession, is entitled to both the assured return as well as delayed possession charges?
23. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottee on account of a provision in a MoU or in the BBA or an addendum to the MoU/BBA or allotment letter. The assured return in this case is payable from the date i.e., 01.07.2018 till possession is handed over to the complainant-allottee. If we compare the assured return i.e., Rs.27,443/- per month with delayed possession charges i.e., Rs.21,474/- approximately payable under proviso to section 18 (1) of the Act of 2016, the assured return is much higher. By way of assured returns, the promoter has assured the allottee that he will be entitled for this specific amount till handing over of possession. Accordingly, the interest of the allottee is protected even after the due date of possession is over as the assured return are payable till offer of possession. The purpose of delayed possession charges after due date of possession is over and payment of assured return after due date of possession is over are the same and safeguard the interest of the allottee as his money is continued to be

used by the promoter even after the promised due date and in return, he is paid either the assured return or delayed possession charges, whichever is higher.

24. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under section 18 and assured return is payable even after due date of possession till the handing over of possession of the said unit. The allottee shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation. In the present case, the assured return was payable till the possession of the unit is handed over to the complainant. The project is considered habitable or fit for occupation only after the grant of occupation certificate by the competent authority. However, the respondent has not received occupation certificate from the competent authority till the date of passing of this order. Hence, the said building cannot be presumed to be fit for occupation. In view of the above, the assured return shall be payable till the possession of the unit is handed over to the complainant after obtaining the occupation certificate from the concerned authorities.
25. Hence, the authority directs the respondent/promoter to pay assured return to the complainant at the rate of Rs.27,443/- per month from the date when the payment of the assured return has not been paid i.e., 01.04.2020 till the possession is handed over to the complainant after obtaining the occupation certificate.

E.V Direct the respondent to pay an additional amount of Rs.1,00,000/- to the complainant towards litigation cost.

26. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation &

litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

E.VI Direct the respondent to waive off any maintenance charges, cost of parking or any other charges that the respondent may have charged since the respondent has not offered possession till date.

27. The Authority after carefully considering the submissions presented by the complainant, finds that the complainant has failed to substantiate his claims with any documentary evidence and it has not been pressed during the proceedings by the counsel for the complainant. In the absence of such material proof, the Authority is unable to ascertain the legitimacy of the complainant's concerns about the claimed reliefs. Thus, no direction to this effect.

F. Directions of the authority:

28. 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 to pay the assured return at the rate i.e., Rs.27,443/- per month as per agreed terms of MoU from the date i.e., 01.04.2020 till the handing over of possession after obtaining the occupation certificate.
 - ii. The respondent is directed to pay arrears of accrued assured return as per MoU dated 01.07.2018 till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @ 8.80% p.a. till the date of actual realization.

iii. The complainant is directed to pay outstanding dues, if any remains after adjustment of payable assured returns, the respondent shall handover the possession of the allotted unit on obtaining of occupation certificate and execute conveyance deed in next 90 days.

29. Complaint stands disposed of.

30. File be consigned to registry.


(Phool Singh Saini)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority,
Gurugram

Dated: 23.12.2025

HARERA
GURUGRAM