

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**Date of filing of complaints: 16.06.2025
Date of decision : 12.02.2026

NAME OF BUILDER		M/S HOME TOWN PROPERTIES PRIVATE LIMITED	
PROJECT NAME		"Oodles Skywalk" Situating at Sector 83, Gurugram	
Sr. No.	Case No.	Case title	APPEARANCE
1.	CR/2942/2025	Charan Singh and Mam Chand V/S M/s Home Town Properties Private Limited	Mr. Ajit Singh (Advocate) Mr. Gulshan Sharma (Advocate)
2.	CR/2943/2025	Charan Singh and Mam Chand V/S M/s Home Town Properties Private Limited	Mr. Ajit Singh (Advocate) Mr. Gulshan Sharma (Advocate)

CORAM:

Shri Phool Singh Saini

Member**ORDER**

1. This order shall dispose of both the complaints titled as above filed before this authority in form CRA under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the





project, namely, "Oodles Skywalk" being developed by the same respondent-promoter i.e., "Home Town Properties Private Limited."

3. The details of the complaints, status of reply, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given below:

Project Name and Location	"Oodles Skywalk", Sector-83, Gurugram
Project area	3.0326 acres
DTCP License No. and validity	08 of 2013 dated 05.03.2013 Valid up to 04.03.2017
Name of Licensee	Dharam Singh
RERA Registered or Not Registered	Registered vide registration no. 294 of 2017 dated 13.10.2017 valid up to 31.12.2019
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.
Date of start of construction	Not on record
Due date of possession	05.07.2019 (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)
Assured return clause	3. Assured Return 3.1 Till four months from the date of MoU, the Developer, shall pay to the allottee an assured return at the rate of Rs.71.70/- per sq. ft. of super area of premises per month and after payment of balance premium as per schedule -1 till the notice for after of possession is issued, the developer shall pay to the allottee an Assured return at the rate of Rs.136.70/- per sq. ft. of super area of premises per month (hereinafter referred as the 'Assured Return')
Occupation certificate	26.10.2023



Sr. No.	Complaint No., Case Title, Date of filing of complaint and reply status	Unit no. and size	Date of execution of BBA and MOU	Total Consideration / Total Amount paid by complainant	Sale Amount by	Due Date/ Offer of possession (OOP) / Cancellation Letter
1.	CR/2942/2025 Charan Singh and Mam Chand Vs. M/s Home Town Properties Pvt. Ltd. DOF: 16.06.2025 Reply: 30.10.2025	G-125, Ground Floor admeasuring 457.25 sq. ft. super area (Page 52 of Complaint)	MOU dated 24.09.2013 (Page 31 of Complaint) BBA dated 05.04.2016 (Page 50 of Complaint)	TSC-₹70,56,796/- (Exclusive of applicable taxes and charges) (As per allotment letter at page no. 47 of complaint) AP-₹58,84,808/- (As alleged by complainant on page 23 of complaint)		Due Date: 05.07.2019 OOP: 08.11.2023 (Page 90 of reply) Cancellation Letter dated 11.01.2024 (Page 92 of reply)
2.	CR/2943/2025 Charan Singh and Mam Chand Vs. M/s Home Town Properties Pvt. Ltd. DOF: 16.06.2025 Reply: 30.10.2025	G-126, Ground Floor admeasuring 997.61 sq. ft. super area (Page 52 of Complaint)	MOU dated 24.09.2013 (Page 31 of Complaint) BBA dated 05.04.2016 (Page 50 of Complaint)	TSC-₹1,53,83,147/- (Exclusive of applicable taxes and charges) (As per allotment letter at page no. 47 of complaint) AP-₹1,28,39,241/- (As alleged by complainant on page 23 of complaint)		Due Date: 05.07.2019 OOP: 08.11.2023 (Page 90 of reply) Cancellation Letter dated 11.01.2024 (Page 92 of reply)

The complainant herein is seeking the following reliefs:

1. Direct the respondent to recall the cancellation of the unit and restore the commercial unit as its original stage and nature with immediate effect;
2. Direct the respondent to pay delay possession charges in delivering possession of the unit to the complainant.
3. Direct the respondent to handover the possession of the unit to the complainants with immediate effect;
4. Direct the respondent to pay the Assured return to complainants as per their shared calculated till 31.05.2025;
5. Direct the respondent to restrain creating third party interest or charge over the said unit of the complainants in any whatsoever;
6. Direct the respondent to restore the said unit to the complainant at its original stage and nature free from all sorts of encumbrances, loan, lines, agreement;

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

Abbreviation	Full form
DOF	Date of filing of complaint
TSC	Total Sales Consideration
AP	Amount paid by the allottee/s
OOP	Offer of Possession

Handwritten signature

4. The facts of both the complaints filed by the complainants are similar. Out of the above-mentioned case, the particulars of lead case *CR/2942/2025 titled as "Charan Singh and Mam Chand Vs. M/s Home Town Properties Private Limited"* are being taken into consideration for determining the rights of the parties.

A. Project and unit related details

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

Sr. No.	Particulars	Details
1.	Name of the project	"Oodles Skywalk", Sector 83, Gurugram
2.	Project area	3.03 acres
3.	Nature of the project	Commercial Colony
	DTCP license no. and other details	8 of 2013 dated 05.03.2013 Valid up to- 04.03.2017 Licensee- Dharam Singh
4.	RERA registered/not registered	Registered vide no. 294 of 2017 dated 13.10.2017 Valid up to- 31.12.2019
5.	Allotment letter	18.01.2016 (Page no. 47 of complaint)
6.	Unit no.	G-125, Ground floor (Page no. 52 of complaint)
7.	Unit area admeasuring (super area)	457.25 sq. ft. (Page no. 52 of complaint)
8.	Date of execution of space buyer's agreement	05.04.2016 (Page no. 50 of the complaint)
9.	Date of execution of memorandum of understanding	24.09.2013 (Page no. 31 of complaint)
10.	Possession Clause	38. <i>The "Company" will, based on its present plans and estimates, contemplates</i>

		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.
11.	Assured return clause	3. Assured Return 3.1 Till four months from the date of MoU, the Developer, shall pay to the allottee an assured return at the rate of Rs.71.70/- per sq. ft. of super area of premises per month and after payment of balance premium as per schedule -1 till the notice for after of possession is issued, the developer shall pay to the allottee an Assured return at the rate of Rs.136.70/- per sq. ft. of super area of premises per month (hereinafter referred as the 'Assured Return') (Page no. 39 of complaint)
12.	Date of start of construction	Not on record
13.	Due date of possession	05.07.2019 (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)
14.	Total sale consideration	Rs.70,56,796/- (Exclusive of applicable taxes and charges) (As per allotment letter at page no. 47 of complaint)
15.	Amount paid by the complainants	Rs.58,84,808/- (As alleged by the complainant at page no. 23 of complaint)
16.	Demand and reminder letters	10.01.2018, 07.08.2018, 15.01.2019, 30.05.2019 (Page no. 78 to 85 of reply)
17.	Cancellation letter	20.12.2019 (Page no. 86 of the reply)
18.	Occupation certificate	26.10.2023



		(Page no. 88 of the reply)
19.	Offer of possession	08.11.2023 (Page no. 91 of the reply)
20.	Reminder letter for payment	18.12.2023 (Page no. 92 of the reply)
21.	Cancellation letter	11.01.2024 (Page no. 96 of the reply)
22.	Assured return paid by respondent to complainants till 20.05.2017	Rs.25,15,435/- (As pleaded by respondent at Page no. 05 of the reply)

B. Facts of the complaint

6. The complainant/allottee has made the following submissions:

- a) That, somewhere in the year 2013, the respondent through its marketing executives had advertisement made through various medium and means approached the complainants with an offer to invest and buy a unit in the proposed project of the respondent, which respondent was going to launch under the name and style of "Oodles Skywalk" situated at Sector-83, Gurugram. The respondent had represented to the complainants that respondent is very ethical business house in the field of construction of residential and commercial project and in case, the complainants would invest in the project of respondent then respondent would deliver the possession of proposed unit on the assured delivery date as per the best quality assured by the respondent. The respondent had further assured the complainants that the respondent has already secured all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specification. The respondent had also shown the brochures and advertisement



material of the said project to the complainants given by the respondent and assured that the allotment letter and Builder Buyer's Agreement for the said project would be issued to the complainants within one week of booking to be made by the complainants. The complainants while relying on the representations and warranties of the respondent and believing those to be true had agreed to the proposal of the respondent to book the unit in the project of respondent. The representative of the respondent had also shown the brochures to the complainants.

- b) The respondent arranged the visit of its representatives to the complainants and they also assured the same as assured by the respondent to the complainants, wherein it was categorically assured and promised by respondent that they already have secured all the sanctions and permissions from the concerned Authorities and Departments for the sale of said project and would allot the unit in the name of complainants immediately upon booking. Relying upon those assurances and believing those to be true, the complainants booked a space/unit no. G-125, measuring an area of 457.25 Sq. ft. located on Ground Floor for a total costs of the unit @ Rs.58,84,808/-.
- c) That, on 24.09.2013, the respondent executed a Memorandum of Understanding dated 24.09.2013 in favour of complainants confirming the booking as well as allotment of the said unit by the complainants.
- d) That, thereafter, the respondent without informing the complainants have changed the number of the unit as G-125 to G-



116 and this was conveyed to the complainants by the respondent through a letter dated 15.12.2015.

- e) The complainants stood shocked and astonished when complainants came to know that the respondent has imposed PLC (Preferential /Prime Location Charges) upon complainants, however, the complainants were never agreed upon for the same, when complainants came to know about PLC, then the complainants requested the respondent through a letter dated 18.01.2016 to waive off the PLC charges.
- f) That, it is not out of place to mention here that, as stated above that the respondent has not issued any allotment to the complainants but in order to dupe and lure the complainants in their trap, the respondent issued an Allotment Letter dated 18.01.2016.
- g) While executing MOU dated 24.09.2013, with the complainants, it was assured and represented by respondent that, it would execute the Space Buyer's Agreement with the complainants maximum within one week. However, even after repeated requests made by the complainants, the respondent has executed the Space Buyer's Agreement on dated 05.04.2016, reasons best known to the respondent.
- h) That, on 20.05.2017, the respondent has executed a MOU in respect of PLC and other charges as well as payment to the complainants in regard to the assured return, wherein it was assured by the respondent that the respondent shall adjust the due amount, if any, in the Assured Return, payable to the complainants by the respondent.

- i) That, on 08.11.2023, the respondent has issued a Demand Letter for Offer of Possession to the complainants, wherein the respondent has demanded an amount of Rs.40,18,260/- from complainant. However, in the letters, the respondent has categorically admitted and accepted that the amount of sum assured shall be adjusted in the PLC at the time of offer of possession but the respondent in utter infringement of its promise has violated the same. The respondent has clearly mentioned the PLC Charges in the Space Buyer's Agreement as Rs.11,65,988/- and in the letter dated 08.11.2023, the respondent has demanded an amount of Rs.40,18,260/- against PLC and others charges.
- j) The respondent issued a reminder for payment letter vide Ref. No.221 dated 18.12.2023 however, dispatched by the respondent on 14.11.2023 as per postal receipt, vide which the respondent has demanded a certain amount from complainants but respondent has not discussed anything about the assured return, payable by the respondent to the complainants. However, the same was also replied by the complainants to the respondent through e-mail dated 22.11.2023 and a copy of the same was also sent to the respondent on 22.11.2023.
- k) The said letter dated 18.12.2023 was duly replied by the complainants through their counsel through speed post vide Ref. No. AS/RLN/LC/RERA/JAN-8/2024 dated 08.01.2024, vide which the respondent was made aware of the dues of assured return to be paid by the respondent to the complainants.
- l) That, after allotment of the said Unit, the respondent had executed a Space Buyer's Agreement dated 05.04.2016 in favour of



complainants. However, due to demonetization, imposed on 08.11.2016, the respondent executed a Settlement in continuation of the Space Buyer's Agreement with complainants assuring and promising them to pay the Assured Return to the tune of 28,113/- plus TDS at the rate of 10% each per month against the Unit. However, the respondent has paid this amount to the tune of 28,113/- plus TDS @10% per month till 31.03.2017 but thereafter, the respondent stopped paying even a single penny to complainants. However, rough estimate of the Assured Return payable by respondent is as under: -

Period of Assured Return (state the period, for which the Assured Return is payable) 01.04.2017 to 31.05.2025 = 97 months;
Total of Charan Singh and Mam Chand = 54,53,922/-

- m) The aforesaid amount has neither yet been paid by the respondent to complainants nor had ever showed your intention to pay the aforesaid Assured Return to complainants till date. Apart from this, the total sale consideration of the said unit is of 58,84,808/- and that complainants had paid an amount of 3,29,071.50/- to the respondent in excess against the total sale consideration.
- n) That, in the letter dated 08.11.2023, the respondent has mentioned that an amount of 54,53,922/- plus TDS has become due towards complainants but the respondent has not mentioned that, from which period the Assured Return has been calculated for by the respondent. Though the respondent were/are obligated to state the period, for which the Assured Return is calculated by the respondent.

- o) The respondent issued a Demand Letter dated 18.12.2023, which was dispatched on 23.12.2023 through speed post to the complainants vide which the complainants were threatened to cancel their units.
- p) The letter bearing Ref. No.221 dated 18.12.2023, issued by the respondent was duly replied by the complainants through their Advocate vide Ref. No. AS/RLN/LC/RERA/JAN-8/2024 dated 08.01.2024 through speed post, vide which the respondent was called upon to withdraw the notice letter dated 18.12.2023 being issued by the respondent immediately and to pay the aforesaid dues along-with interest at the rate of 18% per annum from the date of due till actual realization to the complainants, failing of which the complainant shall be constrained to approach the appropriate Court of law having jurisdiction.
- q) That, on 11.01.2024, the respondent has issued a letter with the subject cancellation of unit no. G-125, vide which the respondent has cancelled the said unit illegally and unlawfully without any right, title or interest.
- r) That, a bare perusal of the letter dated 18.12.2023, makes it clear that no Assured Return has been mentioned by respondent; rather, charges for the Registration, Air Conditions Charges, Electricity Charges /Meter Charges, Power Backup Charge and interest as on 18.12.2023, have been mentioned by the respondent. As far Electricity Charges/Meter Charges are concerned, it is submitted that as per the Clause-55 and 64 of the Space Buyer's Agreement, the payment of electricity is subject to the bill being raised by the



Maintenance Agency and as per the units consumed and as recorded by the electricity meter.

- s) The respondent committed grave deficiency in services by not delivering the possession of the Unit, which is still not near completion. On top of that the respondent has charged heavy rate of interest on delayed payment, which is at the rate of 18 percent per annum but miserably failed to perform its part of the agreement. The complainants suffered a huge loss by paying a huge amount of 58,84,808/- and still continue to suffer at the hands of respondent as being deprived of their money for a number of years without being delivered any possession of the said Unit or without being paid any interest on the huge amount.
- t) The cause of action to file the present complaint accrued to complainants on each and every date and it finally accrued when the respondent flatly refused to accede to the genuine and lawful request of the complainants. However, the cause of action accrued to the complainants on each and every occasion as averred hereinabove and cause of action is still subsisting and continuing one.

C. Relief sought by the complainants:

7. The complainant has sought following reliefs:

- I. Direct the respondent to recall the cancellation of the unit and restore the commercial unit as its original stage and nature with immediate effect;
- II. Direct the respondent to restore the said unit to the complainant at its original stage and nature free from all sorts of encumbrances, loan, lines, agreement.



- III. Direct the respondent to restrain creating third party interest or charge over the said unit of the complainants in any whatsoever;
 - IV. Direct the respondent to pay delay possession charges in delivering possession of the unit to the complainant.
 - V. Direct the respondent to pay the Assured return to complainants as per their shared calculated till 31.05.2025;
 - VI. Direct the respondent to handover the possession of the unit to the complainants with immediate effect;
8. On the date of hearing, the authority explained to the respondents/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 the respondent

9. The respondent has contested the complaint on the following grounds.
- a) That with respect to the project, it is 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. 08/2013 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.

- b) On 24.09.2013, an MoU for commercial Space for Unit bearing no. G-116, having super area of 457.25 sq. ft. with sale consideration of Rs. 58,94,808/-, excluding other charges were executed between the complainants and the respondent.
- c) Thereafter, as per request of the complainants through Letter dated 15.12.2015, Unit bearing no. G-116 was replaced and a new Unit bearing no. G-125 was assigned to the complainants as per their wishes. Thereafter, on 18.1.2016, an Allotment Letter was issued by the respondent relating to allotting Unit bearing no. G-125.
- d) That, thereafter, on 5.4.2016, a Space Buyer Agreement (SBA), which is the final document relating to Unit bearing no. G-125 was executed between the complainants and the respondent, wherein sale consideration of Rs. 70,50,796/- was agreed to be paid by the complainants to the respondent. In the said Agreement, it was



clearly mentioned that all previous agreements/MoU executed earlier were superseded by clause 79 and 83 of the Final Agreement.

- e) 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 complainants by the respondent company and thus, it cannot be said that respondent company has been defaulting in paying the same.
- f) Thus, as stated above, after execution of SBA, the complainants were not entitled for any "assured return" as agreed by themselves through execution of SBA. However, it is relevant to state here that though the "assured return" was stopped through Letter dated 22.09.2017, however, by that time, an excess amount of Rs. 6,87,214/- was paid to the complainants in the form of "assured return", whereas it is a matter of record that till then the complainants were paid Rs. 25,15,435/- the "assured return" as per MoU. Thereafter, inadvertently a letter was issued on 20.5.2017 by the Accounts Department of the respondent, which was ultimately withdrawn through Letter dated 22.9.20217 by the respondent, clearly spelling therein that Letter dated 20.5.2017 was issued inadvertently due to clerical error, which could be treated as null and void.
- g) Thereafter, on 10.1.2018, the respondent sent a Demand Letter demanding the outstanding dues of Rs. 13,06,889.03 from the complainants, which was followed by another reminder letters



dated 07.08.2018 and 15.01.2019 and final reminder for payment. Despite receiving aforesaid letters/reminders including Final Reminder, when complainants failed to make the payments almost for 1.5 year, the constrained to cancel the Unit through respondent was Cancellation Letter dated 20.12.2019.

- h) That after receiving the aforesaid Cancellation letter, the complainants around July, 2013, visited the office of the respondent and requested for revival of Unit with a promised to clear the entire dues. It is relevant to mention here that on 26.10.2023, the respondent received the occupation certificate from the department.
- i) That as per request of revival by the complainants, the respondent calculated the entire due amount and issued the Final Demand Letter/Offer Letter for Possession dated 08.11.2023 to the complainants, requesting them to pay the total due amount of Rs. 40,18,260/- with due date 08.12.2023. However, despite receiving of that Demand Letter / Offer Letter for Possession, the complainants did not clear their dues, which led to issuance of Reminder Letter for payment and Offer of Possession dated 18.12.2023 to the complainants, intimating them finally to clear their dues relating to the Unit concerned, otherwise the respondent would be constrained to cancel the Unit in question.
- j) That when the complainants failed to clear the dues relating to Unit concerned, the respondent once again was constrained to cancel the Unit due to non-payment through its Letter dated 11.01.2024.
- k) Thereafter, instead of paying / clearing the dues relating to Unit concerned, the complainants filed false and fictitious complaints



before the Police Stations, wherein while filing the reply to the complaint by the respondent, the said complaint stands nowhere.

- l) 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.
- m) That, in fact, with respect to "assured return", the Securities & Stamp; Exchange Board of India has held the same illegal transactions; thus the "assured return" payment was stopped, seeing the guidelines issued by SEBI, India.
- n) Since the tentative Unit has already been cancelled, the respondent as per terms of SBA, would deduct the 10% and would adjust the DPC amount from the date of cancellation till the date of Order and then refund the amount to the complainants.

E. Jurisdiction of the Authority:

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

E.I Territorial Jurisdiction:

11. 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.

E.II Subject-matter Jurisdiction:

12. 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.

13. 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 complainants at a later stage.

F. Findings on the relief sought by the complainant

- F.I Direct the respondent to recall the cancellation of the unit and restore the commercial unit as its original stage and nature with immediate effect.**
- F.II Direct the respondent to restore the said unit to the complainant at its original stage and nature free from all sorts of encumbrances, loan, lines, agreement.**
- F.III Direct the respondent to restrain creating third party interest or charge over the said unit of the complainants in any manner whatsoever.**



14. The above-mentioned relief(s) sought by the complainants are taken together being inter-connected.
15. The factual matrix of present case reveals that the complainants were allotted unit no. G-125, Ground Floor, in the respondent's project at sale consideration of Rs.70,56,796/-. A memorandum of understanding (MoU) was signed between the complainants and the respondent on 24.09.2013. Thereafter, a buyer's agreement was executed between the parties on 05.04.2016. The possession of the unit was to be offered within 36 months from the date of commencement of construction or date of agreement, whichever is later and it is further provided in agreement that promoter shall be entitled to unqualified grace period of three months. The date of construction commencement was not available from the documents placed on record by both the parties; therefore, due date of possession is calculated from the date of execution of the agreement between the parties. Therefore, the due date of possession comes out to be 05.07.2019, including grace period of three months being unqualified and unconditional.
16. Upon perusal and submission of complainants it has been found that allotment of booked unit was cancelled by the respondent on 11.01.2024 due to non-payment of amount as per demand issued along with offer of possession dated 08.11.2023. Now, the foremost question which arises before the Authority is that whether the cancellation of the unit of the complainants is valid or not?
17. The respondent has cancelled the unit vide cancellation letter dated 11.01.2024 after obtaining occupation certificate from the competent Authority on 26.10.2023 and offer of possession on 08.11.2023 on account of outstanding dues after issuing a sole reminder letter dated



18.12.2023. The Authority has observed that as per clause 9.3 of the model buyer's agreement for sale of the Rules, 2017, if the allottee continues his/her default for a period beyond 90 days after the notice received from the developer in this regard, the developer may terminate the agreement and cancel the allotment of the unit. In the present complaint, the last demand which was not paid by the complainants was raised on offer of possession dated 08.11.2023 and the unit was cancelled on 11.01.2024 which means the unit was cancelled within 63 days from the date of last unpaid demand. It clearly depicts that the respondent has failed to abide by the terms and conditions of the agreement for sale as prescribed under the provisions of the Rules, 2017.

18. Further, at the time of cancellation of allotment of unit, respondent was already in receipt of Rs.58,84,808/- which is more than the basic sale price of unit being Rs.55,78,450/-. Further, the possession of the unit was to be handed over to the complainants by 05.07.2019 and it was only on 26.10.2023 that occupation certificate was obtained by the respondent-promoter from the competent authority and thereafter, possession was offered to the complainants only on 08.11.2023. Therefore, the interest accrued during the delay period significantly reduces the amount payable by the complainant. Upon adjustment of this interest, the respondent would, in fact, be liable to pay the complainant. Despite this, the respondent chose to cancel the unit on grounds of non-payment, while neglecting its own obligations. Such actions by the respondent displays bad faith, as it failed to adjust the delay period interest since the complainants had already paid more than basic sale consideration of the unit. **Alleged cancellation for**



these reasons is not tenable and is therefore, quashed. Therefore, the respondents are directed to reinstate the unit of the complainants within 30 days of this order.

F.IV Direct the respondent to pay delay possession charges in delivering possession of the unit to the complainant.

F.V Direct the respondent to pay the Assured return to complainants as per their shared calculated till 31.05.2025.

19. The above-mentioned reliefs are interrelated accordingly, the same are being taken up together for adjudication. The complainants have sought the delay possession charges and also sought assured return on monthly basis as per the MoU dated 24.09.2013.
20. Upon consideration of the documents available on record and submissions made by both parties. The Authority observes that, the complainant-allottees 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 24.09.2013, wherein the respondent has agreed to allot a shop bearing no. G-125, Ground Floor, area admeasuring 457.25 sq. ft. super area for a total consideration of Rs.70,56,796/- (Exclusive of applicable taxes and charges) which the complainant has paid an amount of Rs.58,84,808/- more than the basic sale consideration till the time of entering the MoU with respondent. Further as per clause 3.1 of MoU dated 24.09.2013, 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.136.70/- per sq. ft. of super area of premises per month. The clause 3.1 is reproduced herein for ready reference:

3. Assured Return

3.1 Till four months from the date of MoU, the Developer, shall pay to the allottee an assured return at the rate of Rs.71.70/- per

sq. ft. of super area of premises per month and after payment of balance premium as per schedule -1 till the notice for after of possession is issued, the developer shall pay to the allottee an Assured return at the rate of Rs.136.70/- per sq. ft. of super area of premises per month (hereinafter referred as the 'Assured Return')

21. Thereafter, on 18.01.2016, vide an allotment letter, the complainant-allottee was allotted a unit/office space bearing no. G-125, Ground floor, admeasuring 457.250 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 05.04.2016.
22. It is pleaded on behalf of the complainants 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 complainants have sought pending assured return as per MoU dated 24.09.2013.
23. Further, the complainants intend to continue with the project and are 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."

24. 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]

25. 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 favor 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.
26. 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.

27. 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. 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 05.07.2019 including grace period of three months. 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?
28. To answer the above proposition, it is worthwhile to consider that the MOU was executed between the parties on 24.09.2013 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 05.04.2016 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 05.04.2016, 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."

29. 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"

30. 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 24.09.2013, as the space buyer's agreement dated 05.04.2016, supersedes all previous documents and agreement executed between the parties.

31. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are 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.

32. 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.
33. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 12.02.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.
34. 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;"

35. 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.
36. 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 being 05.07.2019. By virtue of clause 38 of buyer's agreement executed between the parties, the possession of the subject unit to be delivered by 05.07.2019 as delineated hereinabove. The respondent has obtained the occupation certificate from the concerned competent authority on 26.10.2023 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 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 05.07.2019.
37. 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 complainants 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, they 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., 05.07.2019 till the expiry of two months from the date of offer of possession (08.11.2023) plus two months (i.e., 08.01.2024).

38. 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. 05.07.2019 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.VI Direct the respondent to handover the possession of the unit to the complainants with immediate effect.

39. The grievance of the complainants is that the respondent has failed to handover the physical possession. Therefore, the complainants have sought the direction for handing over the possession of the allotted unit with immediate effect.

40. The Authority observes that respondent promoter has obtained the occupation certificate in respect of the said project from the competent authority on 26.10.2023 and has offered the possession of the subject unit to the complainants on 08.11.2023. Section 17 of the Act obligates the promoter to handover the physical possession of the subject plot/unit complete in all respect as per specifications mentioned in BBA and thereafter, the complainants-allottees are obligated to take the possession within 2 months as per provisions of Section 19(10) of the Act, 2016.
41. 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 respondent is directed to handover the possession of the allotted unit to the complainants complete in all aspects as per specifications of buyer's agreement within a period of 60 days from date of this order after payment of outstanding dues, if any, as the completion certificate in respect of the project has already been obtained by it from the competent authority. The complainants are also directed to pay the outstanding dues if any after adjustment of delay possession charges and take the physical possession of the allotted unit.

H. Directions of the authority

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



- I. Cancellation dated 11.01.2024 is bad in eyes of law and hence set-aside and the respondent is directed to reinstate the unit of the complainant within 30 days of this order.
- II. 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., 05.07.2019 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*.
- III. 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.



- IV. 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.
- V. The respondent is directed to handover the possession of the allotted unit to the complainants complete in all aspects as per specifications of buyer's agreement within a period of 60 days from date of this order after payment of outstanding dues, if any, as the completion certificate in respect of the project has already been obtained by it from the competent authority.
- VI. 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.
- VII. 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.

43. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
44. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
45. Files be consigned to registry.


(Phool Singh Saini)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.02.2026

HARERA
GURUGRAM