

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

Complaint no. : 6486 of 2024
Date of Decision: 30.01.2026

T S Kisan and Co Pvt Ltd

Address:- C-420 Defence Colony New Delhi - 110024

Complainant

Splendor Buildwell Pvt. Ltd

Address:- Splendor forum, 5th floor, plot-3, Jasola
District Centre, New Delhi-110025

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Ms. Anjalika Sharma

Advocate for the complainant

Ms. Shriya Takker and Ms. Meenal
Khanna

Advocate for the respondent

ORDER

1. The present complaint dated 03.01.2025 has been filed by the complainant 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. **Project and unit related details**

2. The particulars of the project, the details of 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	"Splendor Spectrum One", Sector-58, Gurgaon
2.	Nature of the project	Commercial Space
3.	RERA registered/not registered	Registered vide registration no. 376 of 2017 dated 07.12.2017
	Validity status	31.12.2018
4.	DTPC License no.	82 of 2010 dated 12.10.2010
	Validity status	29.05.2020
	Licensed area	6.775 acres
	Name of licensee	M/s Ishayu Builders and Developers Pvt Ltd
5.	Date of MOU	01.09.2019 [Page 28 of complaint]
6.	Area admeasuring	5000 sq. ft. (super area) [Page 31 of complaint]
7.	Assured return clause	<i>5. That the Developer will pay Rs. 60/- (Rupees Sixty Only) per sq. ft. per month on 5000 sq. ft. as an assured return to the Intending Allottee from 1st December 2019 till</i>



		<p><u>the Receipt of the occupation certificate of the said complex or said tower or till the time the said unit is leased out to the prospective lessee whichever is earlier</u></p> <p>[Page 32 of complaint]</p>
8.	Clause 10 & 11 of the MOU	<p>10. If On account of any reason the lease rent charged is less than ₹60 per square feet of super built-up area per month then the developer shall return to the allottee a sum calculated at Rs 145 per square feet of super built up area for every ₹1 drop in the lease rentals below ₹60 per square feet per month.</p> <p>11. In case the lease rent charged is more than ₹60 per square feet of super built up area per month then the allottee shall pay a sum calculated at Rs 72.50 per square feet of super built up area for every ₹1 increase in the lease rentals over and above ₹60 per square feet per month to the developer. The increased sale consideration would be payable by the allottee to the developer within 30 days of intimation.</p>
9.	Total sale consideration	<p>Rs. 2,82,70,000/-</p> <p>[As per clause 3 of MOU, page 31 of complaint]</p>
10.	Total amount paid by the complainant	<p>Rs. 2,82,70,000/-</p> <p>[As per clause 3 of MOU, page 31 of complaint]</p>
11.	Occupation certificate	<p>• 30.01.2019</p>

		{Tower-A, C, E & F} • 06.09.2019 {Tower-B & D} [As per DTCP site]
12.	Assured return given by respondent to the complainant	Rs. 72,00,000/-

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - i. That the Complainant is a Private Limited Company duly incorporated under the provisions of the Companies Act, 1956, having its registered office at C-420, Defence Colony, New Delhi - 110024. The Complainant, acting through its authorized representative and Directors, invested its hard-earned money upon the assurances and representations made by the Respondents and booked an IT Space/Unit in the IT/ITES Colony in the project namely "Spectrum One", being developed by Respondent No. 1 within the territory of Gurugram on land owned by Respondent No. 2, M/s Ishayu Builders and Developers Pvt. Ltd. (hereinafter collectively referred to as "Promoters").
 - ii. That Respondent No. 1 is a company duly incorporated under the Companies Act, 1956, engaged in the business of construction and development in the real estate sector and claims to be a reputed developer. The Respondent is liable for the wrongful acts committed in contravention of statutory provisions and contractual obligations.

- iii. The brief facts of the present matter have already been elaborated in Sr. No. 1 to 19 of the List of Dates and Events and are not reproduced herein for the sake of brevity.
- iv. That Respondent No. 2 (Land Owner) is equally liable and falls within the definition of "Promoter" under Section 2(zk) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA Act, 2016"). Section 2(zk) defines "promoter" to include any person who constructs or causes to be constructed a building for the purpose of sale and includes assignees.
- v. In the present case, Respondent No. 2, being the land owner, caused the construction to be undertaken by transferring development rights to Respondent No. 1 and is therefore jointly and severally liable as Promoter.
- vi. It is settled law, and even as clarified by Maharashtra RERA Circular No. 12 of 2017 dated 04.07.2017, that where revenue sharing arrangements exist between developer and landowner, both shall be treated as promoters under the RERA Act, 2016.
- vii. That on 01.04.2022, the Complainant, acting bona fide and relying upon the assurances of the Respondents, paid a total amount of Rs. 2,82,70,000/- along with Service Tax/GST of Rs. 33,92,400/-, aggregating to the entire sale consideration of the Unit, without execution of any Agreement for Sale or Builder Buyer Agreement.
- viii. That as per Clause 5 of the Memorandum of Understanding dated 01.09.2019, the Promoter assured completion of construction within 15 months, i.e., by 31.12.2020. It was further agreed that in case of delay, the Respondent would pay assured returns @ Rs. 60/- per sq. ft. per month on 5000 sq. ft., amounting to Rs.

3,00,000/- per month w.e.f. 01.12.2019 till receipt of Occupation Certificate (OC) or lease of the unit, whichever earlier.

- ix. However, the Respondent has neither completed the project within the stipulated period nor paid the assured returns as agreed.
- x. That as per Clause 7 of the MOU, the Respondent undertook to lease the Unit for a minimum rent of Rs. 60/- per sq. ft. per month for an initial term of 3 years, extendable by two further terms of 3 years each (total 9 years). In case of failure to lease the Unit at the assured minimum rental, the Respondent was obligated to compensate the shortfall for a maximum period of three years from the date of receipt of OC.
- xi. As on date, neither has the lease deed been executed nor has any minimum lease rental been paid. That under Clause 10 of the MOU, the Respondents undertook to compensate the Complainant at Rs. 145/- per sq. ft. for every one rupee drop below the assured rental of Rs. 60/- per sq. ft. per month. Since no lease rental has been paid, the Respondents are liable to compensate the Complainant for the entire assured rental and consequential loss.
- xii. The Respondents induced the Complainant through misleading advertisements and assurances of guaranteed returns and timely completion, which have not been fulfilled, thereby violating Section 12 of the Act. The Respondents illegally accepted more than 10% of the total sale consideration without executing a registered Agreement for Sale, which is in clear contravention of Section 13 of the Act.
- xiii. The Respondents have acted in complete disregard of the objectives of the RERA Act, 2016, which aims to ensure

transparency, efficiency, and protection of consumer interests in the real estate sector.

- xiv. The Respondents have failed to adhere to statutory obligations and are liable to be penalized under the provisions of the RERA Act, 2016. The Complainant is therefore entitled to relief of possession along with assured returns, arrears of minimum lease rental, and compensation. The Respondents made false and frivolous promises solely to raise funds. The Complainant has suffered severe financial distress due to the malafide conduct of the Respondents. There is reasonable apprehension that the Unit may have been unlawfully sold to a third party for unjust enrichment. The Respondents are habitual defaulters who have systematically breached their contractual and statutory obligations and diverted funds collected from allottees.

C. The complainant is seeking the following relief:

4. The complainant has sought following relief(s):
- i. Direct the respondent to identify, earmark, and allot the unit admeasuring 5000 square feet as promised/allotted to the Complainant in the project "Spectrum 1X", Sector 58.
 - ii. Direct the respondent to execute the Agreement for Sale in favour of the Complainant and to hand over peaceful and lawful possession of the said unit without any further delay.
 - iii. Direct the respondent to pay delay possession charges for the period of delay in handing over possession of the said unit, as per the agreed terms and applicable law.

- iv. Direct the respondent to pay the outstanding assured return at the rate of ₹60 per square foot, payable to the Complainant, along with applicable interest till the date of actual payment.

D. Reply filed by the respondent.

5. The respondent had contested the complaint on the following grounds:

- i. That, without prejudice to the aforementioned contentions, it is stated that the Complainant has approached the Authority with unclean hands and has attempted to mislead the Authority by making incorrect and false averments and stating untrue and/or incomplete facts and, as such, is guilty of *suppressio veri* and *suggestio falsi*. The Complainant has suppressed and/or misstated material facts and, therefore, the Complaint, apart from being wholly misconceived, is an abuse of the process of law.
- ii. It is submitted that the Complaint filed by the Complainant is baseless, vexatious, and not tenable in the eyes of law; therefore, it deserves to be dismissed at the very threshold. The Complaint is liable to be dismissed in view of the Preliminary Objections set out hereinafter. It is submitted that since the Preliminary Objections are jurisdictional in nature and go to the root of the matter, as per settled law, the same ought to be decided in the first instance. Only after deciding the question relating to the maintainability of the Complaint should the matter proceed further. The following preliminary and jurisdictional objections are being raised for dismissal of the Complaint.
- iii. It is humbly submitted by the Answering Respondent that a bare perusal of the Complaint would show that there is no valid Board Resolution in favour of the Authorized Representative of the

Complainant authorizing him to file the captioned Complaint on behalf of the Complainant Company. Moreover, the affidavit attached to the Complaint suffers from fundamental procedural defects which render it legally untenable and inadmissible. The affidavit is not in the prescribed format as required under the applicable procedural rules. A valid affidavit must be properly structured, include the requisite declarations, and comply with the formal requirements set forth under the relevant procedural laws or court rules.

- iv. It is further submitted that the affidavit attached to the Complaint is not signed by the Complainant's Authorized Representative, which alone invalidates it as an affidavit. Additionally, it is neither duly notarized by a Notary Public nor attested by an Oath Commissioner. It is a well-established legal principle that an affidavit, to have evidentiary value, must be signed by the deponent and sworn before and authenticated by a person duly authorized to administer oaths. In the absence of both the deponent's signature and proper notarization, the affidavit lacks authenticity and cannot be treated as a valid piece of evidence. Courts and quasi-judicial bodies have consistently held that affidavits lacking signatures or proper attestation are devoid of legal sanctity and are liable to be rejected.
- v. It is submitted that as per the settled law laid down by the Hon'ble Supreme Court, an improperly verified and unsigned affidavit without the notarial seal of the Notary Public is bad in law and cannot be admitted in evidence. In *A.K.K. Nambiar v. Union of India*, AIR 1970 SC 652, the Hon'ble Supreme Court held that if affidavits

are not properly verified, they cannot be admitted in evidence. The Supreme Court emphasized the importance of proper verification, stating that it ensures the genuineness and authenticity of the allegations and makes the deponent responsible for the statements contained therein. In the absence of proper verification, affidavits cannot be admitted in evidence.

vi. Thus, the absence of a valid Board Resolution, the Complainant's signature, and a properly verified affidavit duly notarized or attested by an Oath Commissioner renders the Complaint defective. Therefore, the Complaint deserves to be dismissed at the outset.

vii. That the present Complaint has been filed with mala fide intentions to wriggle out of contractual obligations, as no cause of action for the relief sought has been made out. After making independent enquiries and being fully satisfied about the project being developed by the Associate Company, M/s Splendor Landbase Ltd., the Complainant Company approached the Associate Company in 2013 for booking a unit in the commercial project 'Splendor Forum'. Thereafter, a Memorandum of Understanding dated 01.09.2019 ("MOU") was executed between the Complainant and the Respondent. The MOU recorded the understanding between the parties regarding virtual units, wherein it was agreed that the units to be leased out would be allotted to the Complainant. It is submitted that the Complainant had deposited the basic sale price of the unit, and the same has been recorded in Clause 4 of the MOU. Over and above the basic sale consideration, the allottee was liable to pay other charges as stipulated in Clause 3 and Clause 15 of the MOU.

- viii. The Respondent duly completed construction of the tower in which the said Unit is located and obtained the Occupation Certificate for the Project on 06.09.2019, clearly reflecting timely completion. After receipt of the Occupation Certificate, and since the Complainant had waived its right to physical possession under Clause 9 of the MOU, the Respondent initiated discussions with prospective tenants to lease out the Unit under the authority granted by the Complainant. However, due to a slump in the real estate market, distressed market conditions, low demand, hostile conditions arising from the COVID-19 pandemic, and the work-from-home trend, leasing could not materialize as contemplated. The Complainant was fully aware of the prevailing circumstances.
- ix. As per Clause 7 of the MOU, the Respondent was obligated to pay minimum assured rental in the event the Unit was not leased out, at Rs. 60 per sq. ft. per month, for a maximum period of three years from the date of receipt of the Occupation Certificate, i.e., until 06.09.2022. As per Clause 7(a) of the MOU dated 01.09.2019, the assured rental payable amounted to Rs. 1,08,00,000/- (36 months \times Rs. 60 \times 5000 sq. ft.). Out of this amount, Rs. 72,00,000/- has already been paid, leaving a balance of Rs. 36,00,000/-. Despite bona fide attempts by the Respondent to complete formalities and inviting the Complainant to its office, the Complainant kept delaying on one pretext or another and raised frivolous issues in an attempt to avoid completing reciprocal obligations.
- x. The Complainant agreed to opt for the second option and affirmed allotment of Units 205 and 218-220 on the 2nd Floor of Tower D / Tower II as part of a larger leased area proposed to be leased to M/s

IA India Accelerator Private Limited for a term of 9 years with a lock-in period of 4 years.

- xi. Upon such acceptance, the Respondent remained ready and willing to execute all necessary documents. The Letter of Intent dated 12.12.2025 executed with M/s IA India Accelerator Private Limited was shared with the Complainant via WhatsApp, demonstrating the Respondent's bona fide intent. The Respondent repeatedly invited the Complainant to execute requisite documents and complete formalities; however, the Complainant failed to cooperate. The conduct of the Complainant demonstrates lack of genuine intent to proceed with leasing.
 - xii. That the Occupation Certificate was issued on 06.09.2019. The present Complaint has been filed on 03.01.2025, i.e., after a period of 5 years, 3 months, and 28 days from the date of issuance of the Occupation Certificate. It is submitted that the Complaint is barred by limitation, as it has been filed beyond the prescribed period of three years under Article 113 of the Limitation Act, 1963, from the date when the right to sue accrued, i.e., September 2019. The present Complaint is therefore barred by limitation and liable to be dismissed on this ground alone.
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 submission made by the parties.

E. Jurisdiction of the Authority

7. The Authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E.I Territorial jurisdiction

8. As per notification no. 1/92/2017-ITCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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

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

Section 11

.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

10. So, in view of the provisions of the Act of 2016 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 identify, earmark, and allot the unit admeasuring 5000 square feet as promised/allotted to the Complainant in the project "Spectrum 1X", Sector 58.

F.II Direct the respondent to execute the Agreement for Sale in favour of the Complainant and to hand over peaceful and lawful possession of the said unit without any further delay.

F.III Direct the respondent to pay delay possession charges for the period of delay in handing over possession of the said unit, as per the agreed terms and applicable law.

F.IV Direct the respondent to pay the outstanding assured return at the rate of ₹60 per square foot, payable to the Complainant, along with applicable interest till the date of actual payment.

11. On the above-mentioned reliefs sought by the Complainant, the same are being considered together, as the findings in one relief will definitely affect the result of the other relief, the same being interconnected. It is admitted that the Complainant was allotted office space admeasuring 5000 sq. ft. in the commercial project of the Respondent titled "Splendor Spectrum One, Sector-58, Gurgaon", situated at Sector-58, Gurugram, Haryana. It is an admitted position that the MOU dated 01.09.2019 is placed at page 28 of the Complaint. As per the Assured Return Clause 5 of the MOU, the Developer was to pay Rs. 60/- (Rupees Sixty Only) per sq. ft. per month on 5000 sq. ft. as an assured return to the intending allottee from 1st December 2019 till receipt of the Occupation Certificate of the said complex or tower, or till the time the said unit is

leased out to a prospective lessee, whichever is earlier. The Complainant paid an amount of Rs. 2,82,70,000/- against the total sale consideration of Rs. 2,82,70,000/-.

12. It stands established on record that the Occupation Certificate (OC) for the subject project was obtained by the Respondent on 30.01.2019 (for Towers A, C, E & F) and on 06.09.2019 (for Towers B & D), as per the DTCP website. As per the MOU, the Respondent paid an amount of Rs. 72,00,000/- to the Complainant towards assured return.
13. The present Complaint has been instituted on 03.01.2025, nearly six (6) years after obtaining the Occupation Certificate. Such an extraordinary delay has neither been explained nor justified by the Complainant at any stage of the proceedings. The record demonstrates complete and prolonged inaction on the part of the Complainant from the date of obtaining the Occupation Certificate until the filing of the present Complaint. The Complainant remained wholly inactive in asserting or pursuing its alleged rights and did not approach any forum during this entire period. This unexplained and inordinate delay defeats the very object of timely redressal contemplated under the Act.
14. While the Act aims to safeguard the interests of allottees, such protection cannot be extended to revive claims that have remained dormant for years, particularly after the Occupation Certificate has been obtained from the competent authority. Entertaining such stale claims would be contrary to the well-settled principles of equity, limitation, and settled jurisprudence.
15. One such principle is that delay and laches are sufficient to defeat the apparent rights of a person. In fact, it is not that there is any period of limitation for the authority to exercise their powers under the section

37 read with section 35 of the Act nor it is that there can never be a case where the authority cannot interfere in a manner after a passage of a certain length of time but it would be a sound and wise exercise of discretion for the authority to refuse to exercise their extraordinary powers of natural justice provided under section 38(2) of the Act in case of persons who do not approach expeditiously for the relief and who stand by and allow things to happen and then approach the court to put forward stale claims. Even equality has to be claimed at the right juncture and not on expiry of reasonable time.

16. Further, as observed in the landmark case i.e. *B.L. Sreedhar and Ors. V. K.M. Munireddy and Ors. [AIR 2003 SC 578]* the Hon'ble Supreme Court held that "Law assists those who are vigilant and not those who sleep over their rights." Law will not assist those who are careless of their rights. In order to claim one's right, one must be watchful of his rights. Only those persons, who are watchful and careful of using their rights, are entitled to the benefit of law.
17. In view of the facts noted hereinabove and the principles applicable thereto, the Authority is of the considered view that the present complaint is not maintainable. The Complainant has remained dormant for an unduly long period without asserting his rights, and the law does not come to the aid of those who sleep over their rights for an unreasonable length of time.
18. It is a settled principle of natural justice that no person's right should be prejudiced due to the unexplained inaction or negligence of another. In the present matter, the Complainant has failed to offer any justification for the inordinate delay of nearly a decade. In these circumstances, the

complaint is held to be non-maintainable, and the reliefs prayed for cannot be granted.

19. Consequently, no case is made out for grant of Delay Possession Charges (DPC) or any other relief.
20. Complaint as well as applications, if any, stands disposed off accordingly.
21. File be consigned to registry.



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 30.01.2026