

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM**Date of decision: **07.04.2026**

NAME OF THE BUILDER			M/s KS Propmart Private Limited
PROJECT NAME: "Park Street", Sector 85, Gurugram			APPEARANCE
1	CR/4140/2024	Ratan Mala Dittmer Vs. KS Propmart Private Limited	Advocate Sh. Garvit Gupta(Complainant) Advocate Sh. Jagdeep Yadav (Respondent)
2	CR/4141/2024	Ratan Mala Dittmer Vs. KS Propmart Private Limited	Advocate Sh. Garvit Gupta(Complainant) Advocate Sh. Jagdeep Yadav (Respondent)
3	CR/4132/2024	Ratan Mala Dittmer Vs. KS Propmart Private Limited	Advocate Sh. Garvit Gupta(Complainant) Advocate Sh. Jagdeep Yadav (Respondent)
4	CR/4133/2024	Ratan Mala Dittmer Vs. KS Propmart Private Limited	Advocate Sh. Garvit Gupta(Complainant) Advocate Sh. Jagdeep Yadav (Respondent)

CORAM:

Shri Arun Kumar

HARERA
GURUGRAM

Chairman

ORDER

1. This order shall dispose of all the 4 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 projects, namely, "Park Street", Sector 85, Gurugram, being developed by the same respondent-promoter i.e., M/s KS Propmart Private Limited. The terms and conditions of the builder buyer's agreements that had been executed between the parties inter se are also almost similar. The fulcrum of the issue involved in all these cases pertains to failure on the part of the respondent/promoter to deliver timely possession of the units in question, seeking refund of the deposited amount by the complainant along with prescribed rate of interest.
3. The details of the complaints, reply status, unit no., date of agreement, plans, due date of possession, offer of possession and relief sought are given in the table below:

Possession clause		<p>7. <i>Possession of the unit for Commercial Usage</i></p> <p>7.1 <i>Schedule for possession of the said unit for commercial usage: The promoter agrees and understands that timely delivery of possession of the unit for commercial usage along with parking (if applicable) to the Allottee(s) and the common areas to the association of allottees or the competent authority within a period of 60 months with additional grace period of 5 months from the date of execution of this agreement subject to such extension as may be permitted by terms and conditions of this agreement including the extension arising out of force majeure conditions or by the order of the competent authorities.</i></p>					
Sr. No	Complaint No./Title/ Date of filing	Unit no. & Area admeasuring	Date of execution of builder buyer's agreement	Date of execution of MoU	Due of possession	Offer of possession	Relief Sought
1	CR/4140/2024 Ratan Mala Dittmer Vs. KS Propmart Private Limited D.O.F: 04.09.2024	SH-30 & Third floor(Retail unit) (As per page no. 100 of the complaint)	27.06.2022 (As per page no. 96 of the complaint)	02.07.2022 (As mentioned on page no. 72 of the reply)	27.11.2027 (Note: due date to be calculated 60 months from the date of	OC - Not obtained TC - Rs. Rs.45,19,541 /- AP: Rs. 42,45,000/-	1. Refund with interest.

	Reply: 06.03.2025	148.865 sq. ft. (Carpet area) and 595.46 sq. ft. (Super area)			execution of agreement i.e., 27.06.2022 plus grace period of 5 months)	Assured return paid. Rs.3,82,050 /-	
2	CR/4141/2024 Ratan Mala Dittmer Vs. KS Propmart Private Limited D.O.F.: 04.09.2024 Reply: 06.03.2025	SH-23 & Third floor(Food Court) (As per page no. 74 of the complaint) 237.32 sq. ft. (carpet area) 1031.84 sq.ft. (super area) (Page 75 of complaint)	08.09.2022 (As per page no. 71 of the complaint)	01.10.2021 (page 35 of complaint)	08.02.2028 (Note: due date to be calculated 60 months from the date of execution of agreement i.e., 08.09.2022 plus grace period of 5 months)	OC - Not obtained TC - Rs. Rs.78,31,666 /- AP - Rs. 32,14,285/- Assured return paid - NA	1. Refund with interest
3	CR/4132/2024 Ratan Mala Dittmer Vs. KS Propmart Private Limited D.O.F.: 04.09.2024 Reply: 06.03.2025	SH-39 & 4th floor(Retail unit) (As per page no. 51 of the complaint) 485.67 sq. ft. (Page 51 of complaint)	23.07.2022 (page 47 of complaint)	02.07.2022 (page 84 of complaint)	23.12.2027 (Note: Due date to be calculated 60 months from the date of execution of agreement i.e., 23.07.2022 plus grace period of 5 months)	OC - Not obtained TC - Rs. Rs.36,86,235 /- AP - Rs. 31,69,811/- Assured return paid - Rs. Rs.2,56,761/-	Refund with interest

4	CR/4133/2024	Unit no.- 11 & 5th floor(Office space) (As per page no. 52 of the complaint)	12.10.2022 (As per page no. 48 of the complaint)	09.07.2021 (page 32 of complaint)	12.03.202 8 (Note: Due date to be calculate d 60 months from the date of execution of agreement t i.e., 12.10.202 2 plus grace period of 5 months)	OC - Not obtained TC - Rs. Rs.48,70,010 /- AP - Rs. 23,94,339/- Assured return paid Rs.1,72,384 /-	Refund
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4. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act, the rules and the regulations made thereunder.
5. The facts of all the complaints filed by the complainants/ allottees are also similar. Out of the above-mentioned cases, the particular's of lead case **CR/4140/2024** at serial no. 1 titled as **Ratan Mala Dittmer VS KS Propmart Private Limited** are being taken into consideration for determining the rights of the allottees qua refund, and other reliefs sought by the complainants.

A. Unit and project related details.

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

**CR/4140/2024 at serial no. 1 titled as Ratan Mala Dittmer VS KS
Propmart Private Limited**

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.	RERA registration and validity	41 of 2019 dated 30.07.2019 valid up to 30.06.2022
7.	Extension of RERA registration	Extension no. 07 of 2023 dated 10.04.2023 valid up to 30.06.2023
8.	Unit and floor no.	SH-30 & Third floor (Retail unit) (As per page no. 100 of the complaint)
9.	Area admeasuring	148.865 sq. ft. (Carpet area) and 595.46 sq. ft. (Super area) (As per page no. 100 of the complaint)
10.	Date of execution of agreement for sale	27.06.2022 (As per page no. 96 of the complaint)
11.	Date of execution of memorandum of understanding	02.07.2022 (As mentioned on page no. 72 of the reply)
12.	Allotment letter for unit no. SH-30	28.09.2022 (As per page no. 93 of the reply)
13.	Total sale consideration	Rs.45,19,541/- (As per allotment letter on page no. 93 of the complaint)
14.	Amount paid by the complainant	Rs. 42,45,000/-
15.	Possession clause	8. Possession of the unit for Commercial Usage 7.2 Schedule for possession of the said unit for commercial usage: The promoter agrees and understands that timely delivery of possession of the unit for commercial usage along with parking (if applicable) to the Allottee(s) and the common areas to the association of allottees or the competent authority within a

		<p><i>period of 60 months with additional grace period of 5 months from the date of execution of this agreement subject to such extension as may be permitted by terms and conditions of this agreement including the extension arising out of force majeure conditions or by the order of the competent authorities.</i></p> <p>(As per page no. 106 of the complaint)</p>
16.	Assured return clause	<p>3.1.1 PRE-POSSESSION LEASE RENTAL: <i>The Developer/ Third Party would pay to the Allottee a pre-possession lease rental at the rate of Rs. 71.29/- (Rupees Seventy One and Paise Two Nine Only) per sq. ft. with effect from 29.04.2021 till the Application of Occupation Certificate for the retail block is filed (hereinafter interchangeably referred to as the Pre-Possession Lease Rental).</i></p> <p><i>Any GST or other indirect Taxes if levied by any Government Authority(les) on this pre-possession Lease shall be borne by the Second Party.</i></p> <p>3.1.2 POST-POSSESSION LEASE RENTAL: <i>After possession, subject to receipt of Possession charges by the Developer, the Developer/ Third Party would pay to the Allottee a monthly lease rental @ Rs. 50/- (Rupees Fifty Only) per sq. ft. till the induction of a tenant or 01 year whichever is earlier (hereinafter referred to as the 'Post-Possession Lease Rental').</i> <i>(Pre-Possession Lease Rental' and Post-Possession Lease Rental collectively referred to as 'Lease Rental').</i></p>
17.	Due date of possession	<p>27.11.2027 (Note: due date to be calculated 60 months from the date of execution of agreement i.e., 27.06.2022 plus grace period of 5 months)</p>
18.	Amount paid by the respondent as assured return	<p>Rs.3,82,050/- (As per page no. 3 of the written submissions filed by the complainant)</p>
19.	Occupation certificate	Not obtained

20.	Offer of possession	Not offered
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B. Facts of the complaint

7. The complainant has submitted as under:

- a) That the respondent offered for sale units in a commercial complex known as 'Park Street' located at Sector 85, Gurugram, Haryana ("Project"), Haryana which claimed to comprise of commercial units, car parking spaces, recreational facilities, gardens etc. The respondent also claimed that it was entitled to construct, develop and sell the commercial group housing project over the project land and that it would throughout act strictly as per the law, rules, regulations and the provisions laid down by the concerned authorities.
- b) That the complainant received a marketing call from the office of respondent in the month of December, 2020 for booking in the above-mentioned project of the respondent. The complainant before the endorsement had also been attracted towards the project on account of publicity given by the respondent through various means like various brochures, posters, advertisements etc. The marketing staff of the respondent painted a very rosy picture of the project and made several representations with respect to the innumerable world class facilities to be provided by the respondent in its project. The marketing staff of the respondent also assured timely delivery of the unit.
- c) That the respondent accordingly issued an Allotment letter dated 27.10.2021 to the complainant wherein unit (office) bearing no. SH-04 admeasuring an area of 920.11 sq. ft. in the project (the "said unit") was allotted to the complainant. The complainant, induced by the assurances and believing the representations made by the respondent to be true, decided to make the majority of the payment of the total sale

consideration of Rs. 45,00,000/- and as a pre-requisite, the same was duly paid by the complainant to the respondent. It was understood that in lieu of more than 65% of the payment made by the complainant upfront, the Respondent would make payment of pre-possession lease rental and thereafter lease rental to the complainant after offering the possession of the unit. Thus, more than 65% of the payment of the sale consideration of the unit was paid by the Complainant to the respondent even before the allocation of a unit by the respondent. It is pertinent to mention herein that as on that date, the Complainant had paid Rs. 45,00,000/- out of Rs. 69,83,635/- to the Respondent. It is further submitted that the Respondent was in receipt of the said amount before the execution of the buyer agreement. In this conduct, the respondent violated section 13(1) of Real Estate (Regulation and Development) Act, 2016 which clearly states that "a promoter shall not accept a sum more than ten percent, of the cost of the apartment, plot or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.

- d) That from the very inception it was mutually agreed between the parties that the unit in question would be first handed over to the complainant by the respondent and thereafter, if agreed, then the unit would be leased by the respondent on behalf of the complainant. Furthermore, it was also decided that since major part of the total sale consideration was already paid by the complainant to the Respondent, hence in lieu of the same, the respondent had agreed to provide monthly pre-possession lease rental to the complainant.

- e) That surprisingly, unlike other similar cases filed by the complainant against the respondent wherein the respondent shared a copy of the Memorandum of Understanding (“MOU”) with the complainant, no such mou was shared by the respondent with the complainant detailing the terms and conditions of the pre-possession lease rentals and post possession lease rentals. When the complainant confronted the respondent about the same, it was categorically assured by the respondent that the mou for the said office could not be finalized. However, the respondent would keep on making payment towards the pre-possession lease rentals to the complainant at the rate of Rs. 38,205/- per month.
- f) That the respondent categorically assured the complainant that he need not worry and that the respondent would complete the project on time, offer the possession and would keep on making payment towards the committed returns. Since the complainant had already parted with a huge amount, she was left with no other option but to accept the assurances of the respondent.
- g) That when the complainant visited the project site to check the construction status of the unit allotted to her, the respondent did not allow her to inspect the unit citing an excuse that the construction of the unit was still under progress. The complainant requested the respondent telephonically, and by visiting the office of the respondent to update her about the construction status. However, the respondent in order to dilly-dally the matter continuously misled the complainant by giving incorrect information and timelines within which it would issue an offer of possession to the complainant. However, the respondent assured the complainant that it would keep on making payment towards the Pre-possession lease rental to the complainant as per the terms of the

allotment. It is pertinent to mention herein that the respondent has not made the complete payment towards the pre-possession lease rental as guaranteed to her vide the clauses of the MOU. The complainant has till date received Rs. 3,82,000/- as pre-possession lease rental from the Respondent for 10 months only.

- h) That thereafter, the respondent approached the complainant and informed her that on account of certain unavoidable circumstances, the respondent will change the unit allotted to the complainant. Similarly, it was informed that the said unit change would also result in change of the super area of the unit allotted to the complainant. It was also informed that the category of the unit which was allotted to the complainant would change from being an 'Office' to being a 'Shop'. When the complainant protested against the said proposal, the complainant was threatened by the respondent that if the same was not acceptable to them, then the entire payment done by the complainant would be forfeited by the respondent. The originally booked unit i.e. office bearing no. SH-04 was having super area of 920.11 sq.ft whereas the unit proposed now being a shop bearing no. SH-30 was having super area of 595.460 sq.ft.
- i) Since, the complainant had made payment towards substantial payment out of the total amount, she was left with no other option but to accept the dictated terms of the respondent. However, the complainant noticed that the terms of the agreement were silent over the pre-possession lease rentals and post possession lease rentals which were promised to the complainant by the respondent. The said agreement was also silent over the possession which was guaranteed to be offered to the complainant after completion of the construction. When the complainant confronted the respondent about the same, the respondent assured the complainant that a MOU would be signed wherein relevant clauses of the pre-

possession lease rentals, post possession lease rentals and offer of possession would be mentioned. Hence, agreement for the new unit i.e SH-30 was signed between the complainant and the respondent on 27.06.2022. As a result of deduction in the super area of the unit, the total sale consideration of the unit was decreased from Rs. 69,83,635/- to Rs. 45,19,541/-.

- j) That thereafter, a memorandum of understanding was shared by the respondent with the complainant. As per Clause 3.1.1 of the memorandum of understanding (MOU), the respondent was obligated to pay the complainant pre-possession lease rental at the rate of Rs 71.29/- per square foot of the super area of the premises per month from 29.04.2021 till the application for occupation certificate. As per clause 3.1.2 of the said MOU, it was agreed that 'after possession', the respondent would make the payment of lease rental to the respondent @ Rs. 50/- per sq.ft of super area of premises per month. Clauses 3.1.1 and 3.1.2 of the MOU are reproduced hereunder:-

"3.1.1. The Developer/Third party would pay to the Allottee a pre-possession lease rental at the rate of Rs.71.29/- ...with effect from 29.04.2021 till the Application of Occupation certificate for the Retail Block is filed (hereinafter interchangeably referred to as the 'Pre-Possession Lease Rental')

"3.1.2. After possession, subject to the receipt of Possession charges by the Developer, the Developer/Third Party would pay to the Allottee a monthly lease rental @Rs.50/- ..till the induction of a tenant or 1 year whichever is earlier (hereinafter referred to as the 'Post-Possession Lease Rental')

- k) That very importantly, it was mentioned in the said MOU that upon completion of the complex, it was the obligation of the respondent to offer possession of the unit to the complainant. The said MOU was signed between the complainant and the respondent on 02.07.2022.
- l) The respondent in blatant violation of the agreed terms and conditions laid down in the agreement has suddenly stopped making payments

towards the committed returns/lease rent. The respondent deliberately, mischievously, fraudulently and with malafide motives cheated the complainant. When the complainant confronted the respondent about the illegal stopping of the payments which reflected nothing but deliberate lethargy, negligence and unfair trade practice by the respondent, its representatives started making excuses for non-disbursal of the amount and assured the complainant that the payable amount by the respondent would be paid by it at the time of handing over of possession. Not only has the respondent failed to disburse payment towards the pre-possession lease rentals but also failed to disburse any amount towards post possession lease rental to the complainant. The representatives of the respondent assured that the due amount would be credited in the bank account of the complainant in the due course of time. The fact that till date, the complainant has made payment of Rs. 45,00,000/- i.e almost entire payment towards the revised sale consideration of Rs. 45,19,541/- is evident from a perusal of the consolidated receipt dated 27.09.2022.

- m) However, the assurances of the respondent again turned out to be incorrect and false. The high headedness of the respondent is an illustration of how the respondent conducts its business which was only to maximize the profits with no concern towards the buyers including the complainant. The complainant has till date not received the complete amount towards the pre-possession lease rentals nor has it received the post possession lease rentals.
- n) That it is pertinent to mention here that despite having made the MOU dated 02.07.2022 containing terms very much favorable as per the wishes of the respondent, still the respondent miserably failed to abide by its obligations thereunder. The respondent/promoter even failed to

perform the most fundamental obligation of the agreement which was to even offer the possession of the unit. The failure of the respondent and the fraud played by it is writ large.

- o) That the complainant vide several telephonic conversations and by visiting the office of the respondent enquired about the status of the payment of the pre-possession lease rental and the completion of the construction of the project. However, the respondent on pretext or the other delayed the matter and no satisfactory response was ever given by the respondent. The respondent assured the complainant that the respondent would lease out the unit soon after the completion of the construction and thereafter the due pre-possession lease rental would be paid along with the lease rental. However, despite the said assurances, the respondent failed to comply with its obligations. It is reasserted that the complainant has made the payment towards the full sale consideration as demanded by the respondent and the respondent has done nothing but has only utilized the hard earned amount of the complainant for its own use and purposes. The fact that no intimation regarding the application for the grant of the occupation certificate was given by the respondent to the complainants speaks about the volume of illegalities and deficiencies on the part of the respondent/promoter. There is an inordinate delay in developing the project well beyond what was promised and assured to the complainant.
- p) That the respondent has misused and converted to its own use the huge hard earned amounts received from the complainant and other buyers in the project in a totally illegal and unprofessional manner and the respondent was least bothered about the timely finishing of the project and offering the possession of the unit in question to the complainant as per the terms of the agreement. The complainant has been duped of her

- hard-earned money paid to the respondent regarding the unit in question. The complainant has been running from pillar to post and has been mentally and financially harassed by the conduct of the respondent.
- q) That it is unambiguously lucid that no force majeure was involved and that the project has been at standstill since several years. Despite making almost full payment, the respondent has failed to adhere to the terms and conditions of the agreement of Sale and the promises, assurances and representations which it made to the complainant at the time of the booking.
- r) That due to the fault of the respondent, the complainant has been deprived of a commercial unit for a long time and has suffered very badly. The respondent has continuously been misleading the complainant by giving incorrect information and assurances. The respondent has been brushing aside all the requisite norms and stipulations and has accumulated huge amount of hard-earned money of various buyers in the project including the complainant and are unconcerned about the payment of the pre-possession lease rentals, offering the possession and thereafter post-possession lease rentals.
- s) That it is pertinent to mention here that on account of the delays and laches on the part of the respondent in complying with the terms of the agreement and MOU and after being convinced that the respondent is merely dilly-dallying the matter and has no intention of actually complying with the provisions, the complainant finally asked for the refund of the amount already paid by her by visiting the office of the respondent. However, the respondent on the said request to refund further assured the complainant that the respondent would be transparent in dealing with the complainant and the amount as due would be paid in some time. However, the complainant made it clear that

they do not intend to continue with the project of the respondent and wish to get the refund of the amount already paid by the complainant.

- t) That the complainant have paid substantial sum to the respondent on the anticipation and belief that the money collected by the respondent would be utilized in a manner that was commensurate to the stage of construction and further that the complainant would be provided with timely updates regarding the construction work at site. Yet, the complainant herein had to constantly follow up and chase the respondent to inquire about the status of the project, payment of pre-possession lease rental and further the process of leasing but no satisfactory response or concrete update was provided.
- u) That the grievances of the complainant relate to breach of contract, false promises, gross unfair trade practices and deficiencies in the services. It is the liability of the respondent to pay the amount of pre-possession lease rental on account of the lapses and defaults of the respondent.
- v) That to the further surprise and dismay of the complainant, all promises of the respondent turned out to be false and absolutely misleading since after considerable lapse of time and despite of many follow-ups, the respondent had failed to keep pace with development of the project and the said project is far from completion, in fact as discussed hereinabove has been abandoned by respondent and thus, will not be able to lease the said unit. It is abundantly clear that the respondent has played a fraud upon the complainant and has cheated them fraudulently and dishonestly with a false promise to complete the construction of the project within the stipulated period.
- w) That the respondent in utter disregard of its responsibilities have left the complainant in the lurch and the complainant has been forced to chase

the respondent for seeking relief. Thus, the complainant has no other option but to seek justice from the authority.

C. Relief sought by the complainants:

8. The complainants have sought following relief(s):
- i. Direct the respondent to refund the amount of Rs. 45,00,000/- paid by the complainant along with interest on the amount paid by the complainant at the rate as prescribed in the RERA Act, 2016 and Haryana RERA Rules, 2017 from the date of each payment till the date of realization.
 - ii. Direct the respondent to restrained from creating any third party right on the unit in question.
9. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent.

10. The respondents have contested the complaint on the following grounds:
- a) That present written statement on behalf of respondent no 1 i.e. M/s KS PROPMART Pvt. Ltd. is being filed by Vijay Kumar Mehta who is an authorized signatory of respondent and has been authorized vide board resolution dated 16.10.2023 to Institute, sign, file and verify the present written argument, sign affidavit/applications, execute vakalatnama in Favor of advocates, depose in the court, compound/ compromise the matter and to do all other acts which are necessary for the just decision of the present complaint.
 - b) At the outset, the answering respondent denies every statement, submission, and contention outlined in the complaint to the extent the same are contrary to and/or inconsistent with the true and complete facts of the case and/or the submissions made on behalf of the

answering respondent in the present reply to the complaint. The answering respondent further humbly submits that the averments and contentions, as stated in the complaint under reply, may not be deemed to have been admitted by the answering respondent, save and except what is expressly and specifically admitted, and the rest may be read as a travesty of facts.

- c) That without prejudice to the aforementioned contentions it is stated that the complainant has approached this authority with unclean hands and have tried to mislead the authority by making incorrect and false averments and stating untrue and incomplete facts and, as such, are guilty of suppression of very suggestion fall. The complainant has suppressed and/or misstated the facts and, as such, the complaint apart from being wholly misconceived is rather the abuse of the process of law. On this short ground alone, the Complaint is liable to be dismissed.
- d) That the complainants have neither any cause of action nor any locus standi to maintain the present complaint against the respondent, especially when the complainants defaulted in making payment and are now seeking the complete amendment/ modification/ re-writing of the terms and conditions of the agreement/understanding between the parties. This is evident from the averments as well as the prayers sought in the complaint.
- e) It is submitted that the complainant made an application for provisional allotment of two units in the project developed by the respondent, now as VSR 85 Avenue, which is known as Park State ("hereinafter referred to as the project") with a wide application form. That under the application form, the respondent company issued a welcome letter dated 12.04.2021 to the complainant herein.

- f) That it is also submitted here that post the application form and the welcome letter, the respondent company had initially allotted unit hearing no. Sh-04 to the complainant herein. That the complainant had specifically opted for an investment-linked plan and hence was assured to the tune of Rs 3,82,050/- for 10 months. That the complainant thereafter requested to change her unit. The answering respondent company is a goodwill gesture acceded to the request of the complainant herein and the unit of the complainant was changed from SH-04 to SH-30.
- g) Thereafter a sale agreement dated 27.06.2022 was executed between the parties vide which unit number SH-30 tentatively admeasuring 594.46 sq.ft of the super area on the third floor was allotted to the complainant (herein after referred to as the said unit) for basic sale price of RS 44,65,950/- along with other charges such as IDC, EDC, IFMS, ECC, ACC, Fire Fighting Charges (FFC), Power Back up charges, IFCRF, applicable taxes such as Service tax/GST and such other levies/cessess as may be imposed by anu statutory authority. It is stated that the allotment of the said unit has been confirmed upon execution of the said agreement for sale, and it is the said agreement for sale which contains the allotment terms and governs the builder and allottee relationship between the parties, which is within the jurisdiction of this Hon'ble authority.
- h) That as per the agreement for sale executed between the parties on 27.06.2022 the possession of the retail unit was supposed to be handed over to the complainant with a period of 60 months with an additional grace of 5 months from the date of execution of the agreement subject to Force Majeure conditions.

- i) It is stated that the complainant had opted for investment return plan and in pursuance thereto a memorandum of understanding was executed with the complainant herein regarding pre-possession lease rental and leasing of the said unit (hereinafter referred to as the said MOU). It is submitted that the consideration paid by the complainant under the said agreement for sale has merely been reiterated in the said MOU and thus no separate consideration has been paid by the complainant under the said MOU. It is further stated that various terms of the said MOU have since been declared against law and fresh enactments, such clauses of the said MOU have become redundant. It is stated that accordingly the basic sale price of Rs 44,65,950/- as agreed under the said agreement for sale was reiterated in the said Mou and it was further mentioned that it is **ECLUSIVE** OF IDC, EDC, IFMA, ACC, Fire Fighting charges(FFC), Power Back Up Charges, IFCRF applicable taxes such as service tax/GSTand other levies/ cessess/ as may be imposed by the any statutory authority. That the complainant made a payment of Rs 45,00,000/- including GST to the tune of Rs 2,55,000/-. It is submitted that the complainant was supposed to pay EDC/IDC as and when demanded by the answering respondent company, payment of Rs 2,20,950/- plus taxes being the balance of the agreed sales consideration at the time of filing application for occupation certificate of retail block and was also liable to make payment towards remaining charges in accordance with the payment plan attached as schedule – 1 to the MOU.
- j) That, as per terms of the MOU it was also agreed that the respondent will pay pre-possession lease rental at the rate of Rs 45/- per square feet of the super area till the application for the occupation certificate is filed

- for the retail block. However, the payment of an assured return was subject to a force majeure clause as provided under clause 6 of the MOU.
- k) That from the above clause it becomes quite evident that the complainant was entitled to pre-possession lease rental subject to force majeure conditions in the developing the said project. It is submitted that the construction and development of the project was affected due to various force majeure conditions.
- l) It is submitted that the construction and development of the project was affected due to force majeure conditions. However, the payment of the assured return was subject to the Force majeure clause as provided under clause 6 of the MOU.
- m) It is submitted that the construction and development of the project were affected due to this as well. The Hon'ble Authority has vided its order dated 26.05.2020 Invoked the force majeure clause.
- n) that as per schedule 1 of the MOU dated 02.07.2022, the complainant was supposed to make payment towards EDC/IDC as and when demanded by the respondent company. That the respondent company issued a demand letter dated 16.08.2022 towards payment of EDC/IDC amounting to rupees 3,51,320/-. That since the complainant did not come forward to make the payment, the respondent company again issued a demand letter dated 27.09.2022 towards the payment of EDC/IDC amounting to Rs 3,51,320/-.
- o) That the complainant did not come forward to clear her dues and instead requested the respondent company to issue an allotment letter confirming the allotment of the unit in question. At the request of the complainant herein, the respondent company issued an allotment letter dated 28.09.2022 for the unit SH-30, the allotment of which has already been confirmed by the way of the agreement for sale dated 27.06.2022

and the MOU dated 02.07.2022. It submitted that though the respondent company acceded to the request of the complainant, but the complainant failed to come forward to clear her dues.

- p) That thereafter the respondent company issued a letter dated 13.01.2023 informing the complainant that inadvertently the payment plan was left blank with the agreement for sale dated 27.06.2022, although the same was attached as Schedule -1 to the Mou dated 02.07.2022. It is submitted that vide the said letter, the respondent company provided the payment plan to the complainant. It is reiterated that the payment plan was already provided to the respondent company with the MOU executed between the parties and it was only as an abundant precaution that the same was re-provided to the complainant vide letter dated 13.01.2023.
- q) That the complainant till date has made payment of Rs 45,00,000/- including GST to the tune of Rs 2,55,000/-. That an amount of Rs 3,51,320/- towards EDC/IDC is outstanding on behalf of the complainant. Copy of the statement of accounts is marked and annexed here with as ANNEXURE R-10. It is submitted that the complainant was very well aware that timely payment was the essence of the agreement for sale and the MOU executed between the parties.
- r) That the demand by the respondent for EDC/IDC is as per the Schedule of the payment appended with the MOU, Hence, Being aware about the payment as per the payment plan, the failed to make timely payment and therefore is a chronic defaulter and is liable to pay interest to the respondent company for the delay in payment under section 19(6) RERA which stated that the complainant is responsible to make the necessary payments in the manner and within time as specified in the

agreement and in case of default the complainant is liable to pay interest for delay under section 19(7) of RERA.

- s) That the complainant was very well aware that she was under an obligation to make timely payments. That it is submitted that despite receiving the demand letter, the complainant failed to clear her outstanding dues and perform her contractual obligations. The complainant has chosen to approach this Hon'ble authority with a frivolous complaint only with a malafide intention to unjustly enrich herself and in one way or the other cover up her breaches and non-performance of her contractual obligations. Hence, the complainant is not entitled to any relief whatsoever from this Hon'ble Authority. It is well settled law as held by the Hon'ble Supreme Court of India; a defaulter is not entitled to get any equitable relief. Thus, the complaint must fail.
- t) That the MOU and the agreement for sale were entered into between the parties, and as such, the parties are bound by the terms and the conditions mentioned in the said MOU and the agreement for sale. The said MOU and the agreement for sale were duly signed by the complainant after properly understanding each and every clause mentioned in the MOU and the agreement for sale. The complainant was neither forced nor influenced by the respondent to sign the said MOU and the agreement for sale. It was the complainant who, after understanding the clauses and the said MOU and the agreement for sale in her complete senses.
- u) That the complainant had willfully agreed to the terms and conditions of the MOU, the agreement for sale, and is now at this belated stage, has raised issues and concerns regarding her contractual obligations.
11. All other averments made in the complaints were denied in toto.

12. 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 those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

13. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaints for the reasons given below:

E.I Territorial jurisdiction

14. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the Town and Country Planning Department, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes with office 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 complaints.

E.II Subject matter jurisdiction

15. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.

16. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaints 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.
17. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** 2021-2022(1)RCR(C), 357 and followed in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

18. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainant.

F.I Direct the respondent to refund the amount of Rs. 45,00,000/- paid by the complainant along with interest on the amount paid by the complainant at the rate as prescribed in the RERA Act, 2016 and Haryana RERA Rules, 2017 from the date of each payment till the date of realization.

F.II Direct the respondent to restrained from creating any third party right on the unit in question.

19. The complainant submits that the respondent initially allotted an office unit bearing No. SH-04, having a super area of 920.11 sq. ft. Subsequently, the respondent unilaterally changed the allotment to a smaller shop unit bearing No. SH-30, admeasuring 595.460 sq. ft. Although a revised agreement and a Memorandum of Understanding (MOU) were executed, promising pre-possession and post-possession lease rentals, the respondent failed to make consistent payments and eventually stopped them altogether. The complainant further submits that she was denied site inspection, misled regarding the progress of construction, and was never handed over possession of the unit. Despite repeated follow-ups, the respondent neither fulfilled its contractual obligations nor refunded the amount paid. Aggrieved by such conduct, the complainant has sought a refund of the amount paid.

20. On the contrary, the respondent states that the complainant initially booked a unit and later voluntarily requested a change, which was accommodated as a goodwill gesture. A sale agreement and MOU were duly executed, clearly outlining the terms, including payment obligations and a possession timeline of 60 months with a grace period. The complainant had opted for an investment/assured return plan, with payments subject to force majeure conditions. The respondent claims that project delays were due to such force majeure circumstances and not due to any fault on its part. It further alleges that the complainant defaulted on payments, with approximately Rs.3.51 lakh outstanding towards EDC/IDC despite repeated demands, making her liable for interest under RERA. The complainant willingly signed

the agreements after understanding all terms and is now attempting to evade her contractual obligations.

21. Upon consideration of the facts, documents, and submissions made by the parties and based on the findings regarding contravention under the applicable provisions, the Authority observes that, as per Clause 7.1 of the Agreement to Sell dated 27.06.2022, possession of the subject unit was to be delivered within 60 months plus a grace period of 5 months, i.e., by 27.11.2027. However, the complainant has chosen to surrender the unit prior to the due date of possession by filing the present complaint.
22. Further, as per Clause 7.5 of the agreement to sell dated 27.06.2022, talks about cancellation by allottee. The relevant part of the clause is reproduced as under:

"The Allottee shall have the right to cancel/withdraw his allotment in the Project as provided in the Act:

Provided that where the allottee proposes to cancel/withdraw from the project without any fault of the promoter, the promoter herein is entitled to forfeit the Earnest Money, interest component on delayed payment (payable by the customer for breach of agreement) and non-payment of any due payable to the promoter and other applicable charges. The rate of interest payable by the allottee to the promoter shall be the State Bank of India highest marginal cost of lending rate plus 2% (two percent). The balance amount of money paid by the allottee shall be returned by the promoter to the allottee after the Promoter finds a buyer in respect of that unit within a reasonable period of time."

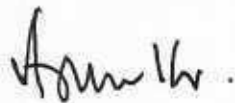
23. Accordingly, the authority hereby directs the respondent/promoter to cancel the unit and return the amount after forfeiting earnest money of 10% of sale consideration of unit along with interest @10.80% per annum (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of filing of complaint 04.09.2024 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G. Directions of the authority

24. 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/promoter is directed to refund the amount after forfeiting earnest money of 10% of sale consideration of unit along with interest @10.80% per annum as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the filing of complaint 04.09.2024 till the actual date of refund of the deposited amount.
 - ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
 - iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.
25. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
26. The complaints as well as applications, if any, stand disposed of.
27. Complaints stands disposed off.
28. Files be consigned to registry.



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 07.04.2026