HARERA
GURUGRAM

BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.: 3929 of 2024
Date of filing of complaint: 09.08.2024
Date of Order: 27.01.2026

Ratan Mala Dittmer — **Complainant**
R/o: - C-1104, Chintels Paradise, Tower-C, Sector-109, Bajghera, Gurugram-122017

Versus

M/s VSR Infratech Private Limited. — **Respondent**
Regd. office at: A-22, Hill View Apartments, Vasant Vihar, New Delhi-110057
Corporate Office at: Plot No.-14, Ground Floor, Sector-44, Institutional Area, Gurugram-122003

CORAM:
Shri Arun Kumar — **Chairman**
Shri Phool Singh Saini — **Member**

APPEARANCE:
Shri Garvit Gupta (Advocate) — Complainant
Shri Jagdeep Yadav (Advocate) — Respondent

ORDER

1. This complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made

thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. No.	Particulars	Details
1.	Name of the project	"114 Avenue", Sector 114, Gurugram
2.	Project Area	2.968 Acres
3.	Nature of project	Commercial colony
4.	DTCP License no. and validity status	72 of 2011 dated 21.07.2011 valid up to 20.07.2015 Renewed up to 20.07.2024
5.	Name of Licensee	M/s AMD Estate & Developers Pvt. Ltd.
6.	RERA registered/ not registered and validity status	**Registered** Vide no. 53 of 2019 dated 30.09.2019 Valid up to 31.12.2019
7.	RERA extension	13 of 2020 dated 05.10.2020 Valid up to 31.12.2020
8.	Unit no.	F-48, first floor, Retail (page 51-52 of complaint)
9.	Unit area admeasuring (super area)	212.95 sq. ft. (as mentioned in provisional allotment letter dated 12.02.2018, MOU & allotment letter dated 27.03.2018)
10.	Increase in super area	267.59 sq ft. **(increased by 25.65%)** (As mentioned in No Due's letter dated 12.04.2021, in BBA & allotment letter dated 30.09.2022)
11.	Provisional allotment letter	12.02.2018 (page 30-31 of complaint)
12.	Memorandum of understanding	15.03.2018 (page 37-50 of complaint)

13.	Clause w.r.t super area in MoU	1.2 It is hereby clarified to allottee that the super area of premises as mentioned herein above is subject to modifications, and final confirmation of same shall be made upon once the structure is complete/ completion of complex/ at the time of offer of possession of unit. (page 41-42 of complaint)
14.	Assured return as per article 3 of MOU dated 15.03.2018	***3. Assured Return*** 3.1 *"It is hereby agreed and undertaken by the Developer that* ***till the notice for offer of possession is issued****, the Developer, shall pay to the Allottee an Assured Return at the rate of Rs.117.40/- (Rupees One Hundred Seventeen Paisa Forty Only) per sq. ft. of super area of premises per month (hereinafter referred to as the 'Assured return').* ***After completion of construction****, till the execution of LOI, the developer shall pay to the allottee(s) an Assured Return @ Rs.88/- (Rupees Eighty-Eight Only) per sq. ft. of super area of premises per month (hereinafter referred to as the 'Assured return'). The assured return shall be subject to tax deduction at source, which shall be payable from the date of this MOU every English Calendar month on due basis."* **(Emphasis supplied)** (page 43-44 of complaint)
15.	Allotment letter	27.03.2018 (page 51-52 of complaint)
16.	Occupation certificate	17.02.2021 (page 146 of reply)
17.	No Dues letter (issued by respondent)	12.04.2021 (page 57 of complaint)
18.	Offer of possession	12.05.2021 (page 58 of complaint)
19.	Buyer's agreement	21.09.2022

		(page 69-106 of complaint)
20.	Possession clause	**7.POSSESSION OF THE UNIT FOR COMMERCIAL USAGE:** ***7.1. 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 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."* **(Emphasis supplied)** (page 80 of complaint)
21.	Due date of possession	**21.02.2028** (Note: the due date is calculated 60 months + 5 months, being unconditional, from the date of execution of BBA dated 21.09.2022)
22.	Total sale consideration	Rs.31,41,465/- (as per clause 1.2 of BBA at page 74 of complaint)
23.	Paid up amount	Rs. 41,28,488/- (as mentioned in allotment letter dated 30.09.2022 and as per SOA page 151 of reply)
24.	Possession certificate ***[Symbolic possession]*** **(signed by the complainant)**	28.09.2022 (page 191 of reply)
25.	Allotment letter	30.09.2022 (page 109-110 of complaint)
26.	Assured return paid by the respondent	Rs.7,30,737/- For a period of 33 months

		(From April, 2018 to March, 2020 & From May, 2021 to January, 2022) [Page 74 of reply]

B. Facts of the complaint:

3. The complainant has made the following submissions:

I. That the respondent offered for sale units in a commercial complex known as '114 Avenue' located at Sector 114, 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.

II. That the complainant received a marketing call from the office of respondent in the month of December, 2017 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.

III. That the respondent accordingly issued a provisional allotment letter dated 12.02.2018 to the complainant wherein unit bearing no. F-48 admeasuring an area of 212.95 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 payment of the total sale consideration of Rs.26,00,086/- and as a pre-requisite, the same was duly paid by the complainant to the respondent. Thus, the entire sale consideration of the unit was paid by the complainant to the respondent even before the allocation of a unit by the respondent. That as on that date, the complainant had paid Rs.28,00,000/- to the respondent. 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".

IV. 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 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 assured returns to the complainant.

V. Accordingly, a copy of the Memorandum of Understanding ("MOU") was sent to the complainant which was a wholly one-sided document containing totally unilateral, arbitrary, one-sided, and

legally untenable terms favoring the respondent and was totally against the interest of the purchaser, including the complainant herein. Most importantly, in the said MOU, the respondent had given itself unlimited and arbitrary powers to lease the unit in question to any third party on behalf of the complainant. The said recitals were in direct contrast to the mutually agreed terms between the parties wherein it was decided that the unit in question would be first handed over for possession to the complainant. When the complainant confronted the respondent on the same, the respondent assured the complainant that the terms of the MOU were as per standard format and in the agreement for sale to be executed later, detailed terms and conditions would be mentioned as to the procedure for taking the possession of the unit.

VI. 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, he was left with no other option but to accept the lopsided and one-sided terms of the MOU and the same was executed on 15.03.2018. The complainant felt trapped and had no other option but to sign the dotted lines. As per clause 3.1 of the Memorandum of Understanding (MOU), the respondent was obligated to pay the Complainant an assured return at the rate of Rs 117.40 per square foot of the super area of the premises per month. This payment shall be made consistently during the period of construction. Upon the completion of construction, the respondent's obligation continues; until the execution of the Letter of Intent (LOI), the respondent shall pay the Complainant an assured return at the

rate of Rs 88.00 per square foot of the super area of the premises per month. The respondent was obligated to make this payment from the date of this MOU i.e., 15.03.2018, every English Calendar month on due basis.

VII. That thereafter, the respondent issued a formal allotment letter dated 27.03.2018 to the complainant and further demanded additional charges from the complainant. The complainant on the demand of the Respondent, made the payment of Rs. 9,90,000/- and Rs. 2,00,000/- to the Respondent. The respondent in lieu of the said amount, issued receipts dated 12.04.2021 and 06.08.2021 to the complainant. That the said amount of Rs. 11,90,000/- was inclusive of the stamp duty and registration charges and the same is evident from the bare perusal of the receipts.

VIII. That the respondent, on 12.04.2021 issued a no dues letter to the complainant wherein, it was admitted by the respondent that additional amount has been deposited by the complainant towards the total sale consideration of the allotted unit. However, surprisingly, the stamp duty and the registration charges which were paid by the complainant were not reflecting in the said no dues letter and rather, it was wrongly mentioned in it that the stamp duty and registration charges were to be paid by the complainant at the time of registration. Furthermore, it was also mentioned in the said no dues letter dated 12.04.2021 that the contingency charges of Rs.53,518/- would be reversible to the complainant.

IX. That the respondent issued a possession letter dated 12.05.2021 to the complainant wherein it was informed to the complainant that the unit was ready for possession and that the complainant could start the process of fit-outs. It was also informed to the complainant

vide the said letter that the possession of the unit can be taken within 30 days. The representatives of the respondent clarified to the complainant that the fact that the respondent has invited the complainant to start the process for fit outs and to take the possession within 30 days meant that the physical possession of the unit was offered to her.

X. That when the complainant visited the project site to take the physical possession of the unit allotted to her, the respondent did not allow her to inspect the unit and take the possession citing an excuse that the possession of the unit can only be taken after execution of the agreement. The complainant requested the respondent telephonically, and by visiting the office of the respondent to update her about the date of execution of the agreement and handing over of the possession. 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 committed return to the complainant as per the terms of the allotment. That the respondent has not made the complete payment towards the assured returns as guaranteed to her vide the clauses of the MOU. The complainant has till date received Rs. 7,30,737/- as assured returns from the respondent from April 2018 till January 2022. The respondent in blatant violation of the agreed terms and conditions laid down in the agreement suddenly stopped making payments towards the committed returns/lease rent from February 2022 onwards. 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. 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.

XI. However, the assurances of the respondent again turned out to be incorrect and false. The high headedness of the respondent n 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 said assured returns and vide the present complaint, the complainant is claiming the same. As on date, the total assured returns due and payable by the respondent to the complainant is Rs. 10,90,580/- till July 2024. That the complainant has not been served a valid notice of offer of possession at any juncture. Consequently, the respondent is duty-bound to remit the assured returns at the rate of Rs. 117.40 per square foot, amounting to Rs. 22,500/- in the instant matter.

XII. Finally, in the month of September, 2022, draft agreement for sale was shared by the respondent with the complainant. Even as per the terms of the agreement for sale, it was decided by the parties in question that the unit would be handed over for possession to the complainant along with specifications, amenities and facilities of the unit as detailed in schedule d of the agreement. However, the said

agreement also contained several clauses which gave right to the respondent to lease the unit in question after handing over the possession to the complainant. When the complainant protested against the said clauses, it was very categorically assured by the respondent that the unit in question would be handed over to the complainant and that the clauses pertaining to leasing would become redundant. When the complainant requested the respondent to issue a new agreement, the said request of the complainant was denied. The respondent, taking undue advantage of the old age of the complainant threatened her with forfeiture of the entire amount paid by her if the standard agreement as shared by it was not signed by the complainant. Believing the assurances of the respondent that the leasing clauses forming part of the agreement would not be considered by the respondent, the complainant signed the same on 21.09.2022. on 21.09.2022, an agreement for sale was executed between the complainant and the respondent.

XIII. That the complainant was shocked and surprised to receive possession certificate dated 28.09.2022 issued by the respondent wherein the respondent gave symbolic possession of the unit to the complainant. The contents of the said certificate dated 28.09.2022 are null, void and denied in toto by the complainant. Thereafter, the complainant was further in receipt of an allotment letter dated 30.09.2022 wherein the respondent unilaterally increased the total sale consideration of the unit from Rs. 26,00,086/- to Rs. 32,67,232/-. That the complainant has also paid Rs.41,28,488/- and the same has been admitted by the respondent in the statement of account dated 16.05.2023 issued by it. The said increase was on account of

increase in the super built-up area of the unit in question from 212.95 sq. ft to 267.590 sq. ft. The respondent has acted in strict violation of Section 14 of the RERA Act, 2016 which mandates a promoter to seek consent from the allottee in case of change in the layout of a unit.

XIV. That despite having made the MOU dated 15.03.2018 and agreement for Sale dated 21.09.2022 containing terms very much favorable as per the wishes of the respondent no.1, 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 handover the physical possession of the unit in question. The failure of the respondent and the fraud played by it is writ large.

XV. That when the complainant went to the project site to inspect the unit in question and to enquire about the execution of the lease deed, the complainant was shocked to see the construction status. No construction activities were going on at the project site and it was clear that the work had been at standstill for several months. The actual ground reality at the construction site was way different than what the respondent had claimed to the complainant regarding the completion of the project in its letter dated 28.09.2022. The representatives of the respondent were not able to even respond properly to the queries of the complainant regarding handing over of the physical possession of the unit. The respondent yet again, with mala fide motives, gave an assurance that it would soon complete the unit in question and handover the physical possession. However, yet again, the assurances made by the respondent turned out to be false. No concrete steps were taken by the respondent for completion of

the unit in question or for handing over the unit in question to the complainant.

XVI. That the complainant has a strong apprehension that the false claim of completion of the project made by the respondent was nothing but a dishonest attempt of the respondent to stop making payment towards the committed returns. It is reasserted that the complainant has made the payment towards the full sale consideration as demanded by the respondent and the respondent no.1 has done nothing but has only utilized the hard-earned amount of the complainant for its own use and purposes. It is pertinent to mention herein that before filing the present complaint, the complainant had filed a complaint bearing no. RERA-GRG-55-2023 before this Hon'ble Authority. However, the said complaint contained several errors and the complainant was constrained to withdraw the same with the liberty to file a fresh one. However, the respondent in one of the proceedings dated 18.04.2024 in the said complaint has admitted and acknowledged that it is ready to handover the physical possession of the unit to the complainant. Admission is the best form of evidence. The said fact of the obligation of the Respondent to handover the physical possession of the unit has already been admitted by the respondent.

XVII. That the respondent has indulged in another illegality. The respondent in the reply submitted in previous complaint has demanded the maintenance charges for the first time from the complainant to the tune of Rs.1,34,727/-. The complainant was further shocked to receive such demand as the complainant had already made payment of advance maintenance charges of Rs.57,799/- as is evident from the No Dues certificate dated

12.04.2021. Furthermore, the question of payment of maintenance charges does not even arise if the respondent itself had offered symbolic possession of the unit which was not for habitation by the complainant. That the said demand is contrary to the terms of the agreement and the terms of the allotment and the complainant is not liable to make any payment towards the same.

XVIII. 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 physical 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. That even for the sake of arguments, the contentions of the respondent that the construction is complete and hence, the symbolic possession is offered is considered to be true and correct, then also as per clause 22(k)(ii) of the agreement for sale, the complainant is entitled to physical possession of the unit.

XIX. That the unit in question has not been completed by the respondent and that is the reason, neither the physical possession of the unit has been handed over to the complainant nor the unit has been leased out. hence, that is why, the respondent had in the proceedings on 18.04.2024 in the earlier filed complaint agreed to handover the physical possession of the unit to the complainant.

XX. It is unambiguously lucid that no force majeure was involved and that the project has been at standstill since several years. Despite making 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.

XXI. That the respondent by adopting unfair trade practices, misusage of funds, failed to execute the conveyance deed of the unit allotted to the complainant as well as the other similarly placed allottees. Moreover, the obligation to execute the conveyance deed has been detailed in clause (10) of the agreement and the provisions of Real Estate (Regulation and Development) Act, 2016 as well. That as per Section 11(4)(f) and Section 17 of the Real Estate (Regulation and Development) Act, 2016, the promoter is duty bound to execute a registered conveyance deed in favour of an allotee.

XXII. 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 that it would hand over the possession to the complainant very soon along with committed returns for the duration from April 2021 onwards. 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 committed returns/lease rent.

XXIII. That the cause of action for the present complaint is recurring one on account of the failure of the respondent to perform its obligations.

The cause of action arose when the respondent failed to offer possession and committed returns from April, 2021 onwards and finally about a week ago, when the respondent refused to make payment towards the committed returns from April, 2021 onwards and handover the physical possession of the unit in question.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

i. Direct the respondent to declare the possession certificate dated 28.09.2022 as invalid and non-binding upon the complainant.

ii. Direct the respondent to handover the physical possession of the unit to the complainant along with the specifications and the facilities as mentioned in the agreement for sale.

iii. Hold the respondent liable to make payment towards the assured return from April, 2021 onwards as per the terms of the MOU till valid notice of possession.

iv. Direct the respondent to immediately execute and register the conveyance deed in favour of the complainant as the stamp duty and registration charges already stands paid by the complainant.

v. Declare that the amount of stamp duty and registration charges stands paid by the complainant and to direct the respondent to reflect the stamp duty and the registration charges paid by the complainant in the latest statement of account pertaining to the unit in question.

vi. Direct that the clauses of the agreement which gives right to the respondent to lease the unit on behalf of the complainant be declared null and void and not binding upon the complainant.

vii. Direct the respondent not to demand any additional charges on account of increase in super area of the unit.

viii. Direct the respondent not to demand any additional charges on account of maintenance charges from the complainant and refund the advance maintenance charges paid by the complainant to the respondent.

ix. Direct the respondent to refund the contingency charges of Rs.53,518/- to the complainant.

x. Direct the respondent to issue TDS certificates for the payments made by the complainant.

xi. Direct the respondent not to raise any payment demand which is in contrary to the agreed terms of the allotment.

D. Reply by the respondent:

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

i. That the complainant made an application for the provisional allotment of a retail unit bearing no. F-48 located on first floor in the project developed by the respondent known as 114 Avenue (hereinafter referred to as the "project") vide application form. That pursuant to the application form, the respondent company issued a welcome letter dated 08.02.2018 to the complainant herein.

ii. One of the offers made by the respondent at that point of time was that the unit will have a benefit of assured return till the notice of offer of possession and thereafter shall have a benefit of assured return after completion of construction till execution of LOI, subject to force majeure conditions and other conditions mentioned in the MOU. That the complainant accordingly entered into an MOU dated 15.03.2018 with the respondent for the retail unit F-48 tentatively admeasuring 212.95 sq. ft. determining all the rights and liabilities of the parties.

iii. The total agreed consideration for allotment as per MOU is Rs. 25,00,000/- exclusive of IDC, EDC, IFMS, ECC, Fire Fighting Charges (FFC) Power Back up Charges, GST and such other levies/cesses/ as may be imposed by any statutory authority. That the complainants made a payment of Rs.28,00,000/- including GST to the tune of Rs.3,00,000/-. That the complainants were supposed to pay EDC/IDC as and when demanded by the respondent company and were also liable to make payment towards remaining charges in accordance with the payment plan attached as Schedule-1 to the MOU.

iv. There was no time limit provided under the MOU for handing over the possession of the unit. Thus, time was not the essence of the contract for delivering the possession, however, it was mutually agreed upon that the complainant will be entitled to the benefit of assured returns as per the MOU.

v. That as per the terms of the MOU, it was also agreed that the respondent will pay an assured return at the rate of Rs.117.40/- per sq. ft. of the super area till the notice of offer of possession is issued and assured return at the rate of Rs.88/- per sq. ft. of super area after completion of construction, till the execution of the LOI. However, the payment of assured return was subject to the force majeure clause as provided under clause 6 of the MOU.

vi. That the construction and development of the project was affected due to force majeure conditions and the same are enumerated herein below:

   a. The substantial part of the delay in the delivery of the project happened as unknown to the landowner (AMD Estate & Developers) and the developer (Respondent herein); there was

an encroachment by an individual, namely Mukesh alias Mahesh, on part of the land on which the project was to be built. This encroachment came to the knowledge of the developer at the time when construction was to be started, after obtaining a license, all the requisite sanctions, approval of building plan, etc. The aforesaid individual, Mukesh alias Mahesh filed a civil suit before the Gurgaon District Court and obtained a stay order upon the construction over the suit land in one corner of the project. The company could not start construction over the said suit land, to the extent that the project was re-visited and re-planned and the building plans had to be revised so as to exclude the encroached land as the litigation had become a prolonged one. Thus, in this process, the project was substantially delayed (for approximately 4 years) without there being any fault of the answering respondent.

b. That the project in question was launched in the year 2010 and is right on the Dwarka expressway, which was supposed to be completed by the State of Haryana by the end of 2012. That the star purpose of launching the project and object of the complainants buying the project was the connectivity of the Dwarka expressway, which was promised by the State Government to be completed in the year 2012. That it is reiterated that the only approach road to the project in this Dwarka Expressway which is still not complete and is likely to take another year or so. There being no approach road available, it was initially not possible to make the heavy trucks carrying construction material to the project site, and after a great deal of difficulty and getting some kacha paths developed, materials

could be supplied for the project to get completed, which took a lot of extra time. Even now, the Govt has not developed and completed the basic infrastructure, despite the fact that EDC/IDC were both deposited with the State Government on time. The Dwarka Expressway was earlier scheduled to be completed by the year 2012 by the State Government of Haryana. But later failed to develop the said road. In the year 2017, the NHAI National Highway Authority of India) joined to complete the Dwarka Expressway, but again, both State Government as well as NHAI again missed the deadlines and still the Expressway is incomplete, now likely to be completed by the year 2022, if the deadline is adhered to be these agencies. That in this view of the circumstances as detailed above the respondent developer can by no means be expected to complete a project which does not even have an approach road to be constructed by the State. Thus, the respondent cannot be held accountable for the delay in the project, and the State of Haryana and NHAI are responsible, hence answerable for the delay in completing the Dwarka expressway, which in turn has caused the delay of the present project. The completion of the Dwarka expressway, which in turn affected the completion of the project in question, was beyond the control of the respondent. Thus, for just and fair adjudication of this complaint, both the State of Haryana and NHAI are necessary parties to the present proceedings for the purpose of causing the delay in the project, and thus, they are jointly and severally liable for the delay of the project and must pay compensation to the complainant. Thus, on the ground as mentioned above, both

State of Haryana and NHAI, whose details are mentioned, are liable to be impleaded in the array of respondents in the interest of justice and fair play.

c. In the year 2012, on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) were regulated. The Hon'ble Supreme Court directed the framing of Modern Mineral Concession Rules. Reference in this regard may be had to the judgment of "Deepak Kumar v. State of Haryana, (2012) 4 SCC 629", The competent authorities took substantial time in framing the rules and in the process the availability of building materials including sand which was an important raw material for development of the said Project became scarce in the NCR as well as areas around it.

d. The company faced the problem of sub-soil water, which persisted for a period of 6 months and hampered excavation and construction work. The problem still persists, and we are taking appropriate action to stop the same.

e. On 19.02.2013, the office of the Executive engineer, Huda, Division No. II, Gurgaon, vide Memo No. 3008-3181, has issued instructions to all Developers to lift tertiary treated effluent for construction purposes from sewerage treatment plant, Behrampur. Due to this instruction, the company faced the problem of water supply for a period of 6 months.

f. The Company is facing the labour problem for the last 3 years continuously, which slowed down the overall progress of the project, and in case the company continues to face this problem in future, there is a probability of further delay of the project.

g. The contractor of the project stopped working due to his own problems, and the progress of the project was completely at a halt due to the stoppage of work at the site. It took almost 9 months to resolve the issues with the contractor and to remobilize the site.

h. The building plans were approved in January 2012, and the company had timely applied for environment clearances to competent authorities, which were later forwarded to the State Level Environment Impact Assessment Authority, Haryana. Despite our best endeavours, we only got the environment clearance certificate on 28.05.2013 i.e., almost after a period of 17 months from the date of approval of building plans.

i. The typical design of fifth-floor slab casting took a period of more than 6 months to design the shutting plans by the structural engineer, which hampered the overall progress of work.

j. The infrastructure facilities are yet to be created by a competent authority in this sector is also a reason for the delay in the overall project. The drainage, sewerage and other facility work not yet commenced by competent authority.

k. That there was a stay on construction in furtherance to the direction passed by the Hon'ble NGT, in furtherance of the above-mentioned order passed by the Hon'ble NGT.

l. That the sudden surge requirement of labour and then sudden removal has created a vacuum for labour in NCR region. That the projects of not only the respondent but also of all the other developers/builders have been suffering due to such shortage of labour and has resulted in delays in the projects beyond the

control of any of the developers. In addition, the respondent states that this further resulted in increasing the cost of construction to a great extent.

m. Moreover, due to the active implementation of social schemes like National Rural Employment Guarantee and Jawaharlal Nehru National Urban Renewal Mission, there was also more employment available for labours at their hometown despite the fact that the NCR region was Itself facing a huge demand for labour to complete the projects.

n. That the said fact of labour shortage can be substantiated by way of newspaper articles elaborating on the above-mentioned issues hampering the construction projects in NCR. That this was certainly never foreseen or imagined by the opposite party while scheduling the construction activities. That even today in the current scenario where innumerable projects are under construction, all the developers in the NCR region are suffering from the after-effects of labour shortage on which the whole construction industry so largely depends and on which the respondent have no control whatsoever.

o. The Ministry of environment and Forest and the Ministry of mines had imposed certain restrictions which resulted in a drastic reduction in the availability of bricks and availability of Sand which is the most basic ingredient of construction activity. That said ministries had barred excavation of topsoil for manufacture of bricks and further directed that no more manufacturing of bricks be done within a radius of 50 km from coal and lignite-based thermal power plants without mixing 25% of ash with soil.

p. That shortage of bricks in region has been continuing ever since and the respondent had to wait many months after placing order with concerned manufacturer who in fact also could not deliver on time resulting in a huge delay in project.

q. That sand which is used as a mixture along with cement for the same construction activity was also not available in the abundance as is required since mining department imposed serious restrictions against manufacturing of sand from Aravali region.

r. This acute shortage of sand not only delayed the project of the answering respondent but also shot up the prices of sand by more than hundred percent causing huge losses to respondent.

s. Same further cost huge delay in project and stalling various parts and agencies at work in advanced stages, for now the respondent had to redo, the said work causing huge financial burden on respondent, which has never been transferred to complainants or any other customers of project.

t. In addition to that on 08.11.2016, the current Govt. has declared demonetization which severely impacted the operations and project execution on the site as the labourers in absence of having bank accounts were only being paid via cash by the sub-contractors of the company and on the declaration of the demonetization, there was a huge chaos which ensued and resulted in the labourers not accepting demonetized currency after demonetization.

u. That in July, 2017 the Govt. of India further introduced a new regime of taxation under the Goods and Service Tax which further created chaos and confusion owning to lack of clarity in

its implementation. That ever since July, 2017 since all the materials required for the project of the company were to be taxed under the new regime it was an uphill task of the vendors of building material along with all other necessary materials required for construction of the project wherein the auditors and CA's across the country were advising everyone to wait for clarities to be issued on various unclear subjects of this new regime of taxation which further resulted in delays of procurement of materials required for the completion of the project.

v. Further, Developer was faced with certain other force majeure events including but not limited to non-availability of raw material due to various stay orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby stopping/regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. That in addition to above all the projects in Delhi NCR region are also affected by the Blanket stay on construction every year during winters on account of AIR pollution which leads to further delay the projects. That such stay orders are passed every year either by Hon'ble Supreme Court, NGT or/and other pollution boards, competent courts.

w. In simpler words, if a company receives an advance in connection with consideration of an immovable property subject to the condition that such advance is adjusted against such immovable property as specified in terms of the agreement

or the arrangement, such receipt is not a deposit. However, if such receipt is either: (a) received by the company, in the form of instalments or otherwise, from a person with promise or offer to give returns, in cash or in kind, on completion of the period specified in the promise or offer, or earlier, accounted for in any manner whatsoever.

vii. After making sincere efforts despite the force majeure conditions, the respondent completed the construction and thereafter applied for the occupancy certificate (OC) on 15.07.2020. The project was also affected due to the COVID-19 pandemic and after completing the project. The respondent applied for OC on 15.07.2020, however it took considerable time in grant of OC and was finally received by the respondent on 17.02.2021. Almost after a period of 7 months from the date of application for grant of OC. That this delay of the competent authorities in giving OC cannot be attributed in considering the delay in delivering the possession of the unit, since on the day the respondent applied for OC, the unit was complete in all respects. The Occupation Certificate with respect to the Tower where the unit is situated was only granted after inspections by the relevant authorities and after ascertaining that the construction was completed in all respect in accordance with the approved plans and that the unit was in a habitable condition.

viii. The OC has been received by the respondent company on 17.02.2021. That after the receipt of the occupation certificate, the respondent company offered possession to the complainant vide possession letter dated 12.05.2021. As per the MOU executed between the parties, the super area mentioned in the MOU was tentative and was subject to change, the final confirmation of which

was supposed to be made upon once the structure is complete/completion of complex/at the time of offer of possession.

ix. Pursuant to the offer of possession, the complainant made payment of Rs.3,99,000/-, the total amount paid by the complainant till date is Rs.41,28,488/-. That the complainant never objected to the increase in area of the unit. on 21.07.2022, the respondent company issued a letter to the complainant herein requesting her to come for forward and make payment towards charges of property tax and bulk electricity amounting to total Rs.47,215/-.

x. As per the agreement for sale executed between the parties on 21.09.2022, the possession of the retail unit was supposed to be handed over to the complainant within a period of 60 months with additional grace of 5 months from the date of execution of the agreement subject to force majeure conditions.

xi. The agreement for sale was executed between the parties on 21.09.2022 and thus the possession due date comes out to be 28.02.2028. it is submitted that as already mentioned in the preceding paragraphs that after the receipt of occupation certificate on 17.02.2021, the possession was offered to the complainant on 12.05.2021. That only symbolic/constructive possession was to be handed over to the complainant and no physical possession was supposed to be given to the complainant, since the unit booked by the complainant was for leasing purpose. That in furtherance of the offer of possession dated 12.05.2021, the symbolic possession of the unit was handed over to the complainant on 28.09.2022 and a possession certificate dated 28.09.2022 was also issued by the respondent company. The symbolic possession was taken by the complainant after having physically inspected the project and only

after being satisfied with the services, quality of construction and with the warm shell/bare shell structure which is as per the MOU and the agreement for sale executed between the parties. Further, the complainant also agreed to pay for the cost of finishing, fixtures which shall be done as per the requirements of the lessee to whom the unit is leased out.

xii. Since the MOU was executed for the old super area i.e., 212.95 sq. ft (however the agreement for sale was executed for the new super area le. 267.590 sq. ft) the complainant requested the respondent herein to issue a fresh allotment letter for the final super area. As a goodwill gesture, the respondent acceded to the request of the complainant and a fresh allotment letter dated 30.09.2022 for unit F-48 having final super area 267.590 sq. ft., was issued by the respondent company. Thereafter, a letter dated 25.02.2023 was issued by the respondent company informing the complainant that a management company by the name of Mix Quala Services Pvt. Ltd. has been appointed by the respondent company for project management.

xiii. The complainant has made payment of Rs.41,28,488/- till date. The complainant has to further make payment forwards property fax and bulk electricity amounting to total Rs.47,215/- and further towards registration and stamp duty. The complainant has failed to come forward to get the conveyance deed registered and make payment towards the aforementioned pending charges.

xiv. In view of aforementioned facts, the captioned complaint is frivolous, vague and vexatious in nature. The captioned complaint has been made to injure and damage the interest, goodwill and reputation of the respondent and the group housing

project/complex and therefore, the instant complaint is liable to be dismissed in limine. The complainant is not entitled to any reliefs as claimed herein since this Hon'ble Authority has no jurisdiction to entertain the present complaint.

6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the Authority:

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

E.I Territorial Jurisdiction

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

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.

8. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objection raised by the respondent:

F.I Objection regarding force majeure conditions:

9. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as demonetisation, certain environment restrictions, weather conditions in NCR region, shortage of labour, increase in cost of construction material and implementation of GST. However, all the pleas advanced in this regard are devoid of merit. Further, the Authority has gone through the possession clause of the agreement and observed that due date for possession is 21.02.2028. The events alleged by the respondent do not have any impact on the project being developed by the respondent. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter respondent cannot be given any leniency on basis of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to declare the possession certificate dated 28.09.2022 as invalid and non-binding upon the complainant.

G.II Direct the respondent to handover the physical possession of the unit to the complainant along with the specifications and the facilities as mentioned in the agreement for sale.

10. The above-mentioned reliefs sought by the complainant are taken together being inter-connected.

11. As per clause 5 of the buyer's agreement dated 21.09.2022, it was agreed between the parties that the possession of the unit means constructive possession. The relevant portion of the clause is reproduced below:

> *"The Allottee hereby agrees that wherever the reference is made for possession of the unit in this agreement or any other document with reference to the unit, it shall always mean constructive possession of the unit and not physical handover of the unit to the allottee."*

12. In furtherance of the said buyer's agreement, the complainant has taken over the symbolic possession of the unit no. F-48 vide possession certificate dated 28.09.2022. It was duly mentioned in the said letter that the allottee(s) have inspected the project and he/she are fully satisfied with all the services provided by the developer and the same has been duly signed by both the parties. After perusal of all the documents placed on record, the Authority observed that the possession certificate dated 28.09.2022 is in consonance with the agreed terms of the buyer's agreement dated 21.09.2022, thus the same is valid and binding on the complainant. Therefore, no directions to this effect.

G.III Hold the respondent liable to make payment towards the assured return from April, 2021 onwards as per the terms of the MOU till valid notice of possession.

13. The complainant in the present complaint has booked a unit/shop in the project of the respondent namely '114 Avenue situated at sector-114, Gurugram, Haryana. The complainant was allotted a unit bearing no. F-48 situated at first floor, admeasuring 267.59 sq. ft. A memorandum of understanding was executed between the parties on 15.03.2018. Thereafter, the buyer's agreement for the said unit was executed between the complainant and respondent on 21.09.2022. The total sale consideration of the unit was Rs.31,41,465/- and the complainant has paid an amount of Rs.41,28,488/-. As per the possession clause 7.1 of the

agreement the possession of the unit is to be handed over within 60 months with additional grace period of 5 months from the date of execution of agreement. Therefore, the due date of possession comes to 21.02.2028. However, the symbolic possession of the unit has been taken over by the complainant on 28.09.2022. Moreover, as per the clause 3.1 of the MOU dated 15.03.2018 the respondent is obligated to pay the Assured return of Rs.117.40/- per sq. ft. per month w.e.f. 15.03.2018 till the notice of offer of possession is issued and after completion of construction, the developer shall pay to the allottee(s) an assured return @ Rs.88/- per sq. ft. per month till execution of LOI.

14. The complainant is seeking unpaid assured returns on monthly basis as per memorandum of understanding dated 15.03.2018 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the agreement. Though for some time, the assured returns were paid but later on, the respondent has stopped the payment of assured return.

15. The money was taken by the builder as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.

16. The builder is liable to pay that amount as agreed upon. Moreover, an agreement defines the builder/buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allotee arises out of the same relationship and is marked by the original agreement for sale.

17. It is not disputed that the respondent is a real estate developer, and it had not obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. That this Authority has also deliberated the issue of assured return in number of case including ***Prateek Srivastava & Namita Mehta VS M/s Vatika Limited (RERA-GRG-660-2021)***.

18. In the present complaint, the assured return was payable as per clause 3 of MoU, which is reproduced below for the ready reference:

> ***3. Assured Return***
> *3.1 "It is hereby agreed and undertaken by the Developer that **till the notice for offer of possession is issued**, the Developer, shall pay to the Allottee an Assured Return at the rate of Rs.117.40/- (Rupees One Hundred Seventeen Paisa Forty Only) per sq. ft. of super area of premises per month (hereinafter referred to as the 'Assured return'). **After completion of construction**, till the execution of LOI, the developer shall pay to the allottee(s) an Assured Return @ Rs. 88/- (Rupees Eighty-Eight Only) per sq. ft. of super area of premises per month (hereinafter referred to as the 'Assured return'). The assured return shall be subject to tax deduction at source, which shall be payable from the date of this MOU every English Calendar month on due basis."*

19. Thus, the respondent is liable to pay assured returns @ Rs.117.40/- per sq. ft. per month w.e.f. 15.03.2018 till notice of offer of possession. Thereafter, on completion of the unit @Rs.88/- per sq. ft. per month till the execution of LOI.

20. On perusal of all the documents placed on record and submissions made by the parties, the Authority observed that the symbolic possession of the unit has been taken over on 28.09.2022 by the complainant and the respondent has paid an amount of Rs.7,30,737/- for a period of 33 months

to the complainant. Thus, the Authority hereby directs the respondent to pay the unpaid Assured return @Rs.117.40/- per sq. ft. per month for April, 2021 and thereafter from February, 2022 to 28.09.2022. The respondent is further directed to pay the Assured return @Rs.88/- per sq. ft. per month from 29.09.2022 till the execution of LOI in terms of MOU dated 15.03.2018.

G.IV Direct the respondent to immediately execute and register the conveyance deed in favour of the complainant as the stamp duty and registration charges already stands paid by the complainant.

G.V Declare that the amount of stamp duty and registration charges stands paid by the complainant and to direct the respondent to reflect the stamp duty and the registration charges paid by the complainant in the latest statement of account pertaining to the unit in question.

21. As per clause 1.2 of the agreement dated 21.09.2022, the allottee shall also pay stamp duty, registration and other incidental charges for execution and registration of the conveyance deed of the unit in favour of the allottee other than the total sale consideration.

22. Moreover, as per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.

23. In the present case, the unit allotted to the complainant is virtual space and there is no clause for handing over of physical possession of the unit. Thus, the respondent shall execute the conveyance deed in favour of the complainant(s) in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.

G.VI Direct that the clauses of the agreement which gives right to the respondent to lease the unit on behalf of the complainant be declared null and void and not binding upon the complainant.

24. As per clause 2.2 of the Mou dated 15.03.2018, the complainant Authorizes the respondent to lease out the unit to the third party. The relevant clause is reproduced below for the ready reference:

> *"2.2*
> *The Allottee hereby authorizes developer to grant to any person (hereinafter referred to as 'Lessee') on lease the premises, during which the allottee shall not grant the premises on lease to any third party or deal otherwise with the premises without obtaining the written consent of developer."*

25. As both the parties agreed for leasing out the unit to third-party and the complainant has given the right to lease out the same to the respondent vide MOU dated 15.03.2018 which is duly been signed by both the parties. Thus, no directions to this effect.

G.VII Direct the respondent not to demand any additional charges on account of increase in super area of the unit.

26. The buyer's agreement w.r.t allotted unit was executed between the parties on 21.09.2022 and clause 1.8 provides with regard to major alteration/modification which is not more than 10% of the area of the unit, the promoter shall demand that from the allottee as per the payment plan. A reference to clause 1.8 of the agreement must detail as under:

> ***1.8***
> *If there is any increase in the area, which is not more than 10% (ten percent) of the area of the unit, allotted to the allottee, the promoter shall demand that from the allottee as per the next milestone of the payment plan.....*

27. Considering the above-mentioned facts, the Authority observes that the respondent has increased the super area of the flat from 212.95 sq. ft. to 267.59 sq. ft. vide no dues letter dated 12.04.2021 with increase in area of 55 sq. ft. i.e., 20% without any justification or prior intimation to the complainant.

28. That in ***NCDRC consumer case no. 285 of 2018 titled as Pawan Gupta Vs Experion Developers Private Limited***, it was held that the respondent is not entitled to change any amount on account of increase in area. The relevant part of the order has been reproduced hereunder:

The complaints have been filed mainly for two reasons. The first is that the opposite party has demanded extra money for excess area and second is the delay in handing over the possession. In respect of excess area, the complainant has made a point that without any basis the opposite party sent the demand for excess area and the certificate of the architect was sent to the complainant, which of a later date. The justification given by the party that on the basis of the internal report of the architect the demand was made for excess area is not acceptable because no such report or any other document has been filed by the opposite party to prove the excess area. Once the original plan is approved by the competent authority, the areas of residential unit as well as of the common spaces and common buildings are specified and super area cannot change until there is change in either the area of the flat or in the area of any of the common buildings or the total area of the project (plot area) is changed. The real test for excess area would be that the opposite party should provide a comparison of the areas of the original approved common spaces and the flats with finally approved common spaces/buildings and the flats. This has not been done. In fact, this is a common practice adopted by majority of builders/developers which is basically an unfair trade practice. This has become a means to extract extra money from the allottees at the time when allottee cannot leave the project as his substantial amount is locked in the project and he is about to take possession. There is no prevailing system when the competent authority which approves the plan issues some kind of certificate in respect of the extra super area at the final stage. There is no harm in communicating and charging for the extra area at the final stage but for the sake of transparency the must share the actual reason for increase in the super area based on the comparison of the originally approved buildings and finally approved buildings. Basically, the idea is that the opposite party allottee must know the change in the finally approved lay-out and areas of common spaces and the originally approved lay-out and areas. In my view, until this is done, the opposite party is not entitled to payment of any excess area. Though the Real Estate Regulation Act (RERA) 2016 has made it compulsory for the builders/developers to indicate the carpet area of the flat, however the, problem of super area is not yet fully solved and further reforms are required.

29. In view of the above, the Authority has clear observation that there was an increase in a super area which was intimated to the complainant on issuance of no dues certificate and not before. Further, no justification and intimation were made to the complainant in respect of increase in area. So, the respondent can charge from the complainant only on account of increase in the super area up to 10% as per clause 1.8 of the buyer's agreement after providing proper justification and specific details regarding the increase in the super area/carpet area.

G.VIII Direct the respondent not to demand any additional charges on account of maintenance charges from the complainant and refund

the advance maintenance charges paid by the complainant to the respondent.

30. As per clause 11.2 of the agreement dated 21.09.2022, it was agreed between the complainants and the respondent that the expenses of the maintenance charges shall be borne and paid by the allottee. The relevant portion of the said clause is reproduced below for the ready reference:

> ***11. Maintenance of the Building/Tower/Unit/Project:***
> *11.2 The maintenance charges shall be recovered on such estimated basis which may also include the overhead cost on monthly intervals as may be decided by the promoter/maintenance agency and adjusted against the actual audited expenses as determined at the end of every financial year, and any surplus/deficit thereof shall be carried forward and adjusted in the maintenance bills of the subsequent month/financial year. The estimates of the promoter/maintenance agency shall be final and binding on the allottee. The allottee agrees and undertakes to pay the maintenance bills on or before due date as intimate by the promoter/maintenance agency. It is clearly understood by the allottee that the payment of maintenance charges is over and above the total price of the unit.*

31. In view of the above-mentioned facts, the maintenance charges are to be paid by the complainant-allottee in terms of clause 11 of the agreement dated 21.09.2022 executed between the complainant and the respondent subject to obtaining of occupation certificate.

32. The Authority is of the view that the respondent shall charge maintenance charges in terms of the agreed terms after obtaining occupation certificate. In the present complaint, the respondent has obtained the occupation certificate on 17.02.2021. Thus, the respondent shall charge the maintenance charges in consonance with the terms of buyer's agreement dated 21.09.2022 and agreed payment plan.

G.IX Direct the respondent to refund the contingency charges of Rs.53,518/- to the complainant.

33. The Authority has gone through the no dues letter dated 12.04.2021 issued by the respondent and observed that the complainant has paid and amount of Rs.53,518/- against the head of contingency charges. It was mentioned in the letter mentioned above that the contingency charges are

reversible. Thus, the respondent is directed to refund the amount of Rs.53,518/- charged on account of contingency charges.

G.X Direct the respondent to issue TDS certificates for the payments made by the complainant.

34. In the present complaint, the complainant is seeking the relief of issuance of TDS certificates for the payments made by the complainant. The Authority observes that the respondent is well within right to claim the TDS amount and other government charges as agreed between the parties and the same shall be payable by the allottee over and above the sale consideration. However, the respondent is directed to furnish the details of payment of such taxes paid to the concerned Authority. If the respondent/promoter failed to provide the details of taxes as well as applicable charges as per the law of land then the respondent shall refund the excess amount.

H. Directions of the authority:

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

i. The respondent is directed to pay unpaid Assured return @Rs.117.40/- per sq. ft. per month for April, 2021 and thereafter from February, 2022 to 28.09.2022. The respondent is further directed to pay the Assured return @Rs.88/- per sq. ft. per month from 29.09.2022 till the execution of LOI in terms of MOU dated 15.03.2018.

ii. The respondent is directed to pay arrears of accrued assured return as per MOU dated 15.03.2018 till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @8.80% p.a. till the date of actual realization.

iii. The respondent is directed to execute the conveyance deed of the allotted unit upon payment of requisite stamp duty by the complainant as per norms of the state government within the 3 months from the date of this order.

iv. The respondent is directed to refund the amount of Rs.53,518/- charged on account of contingency charges in terms of letter dated 12.04.2021.

v. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

vi. 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.

36. Complaint stands disposed of.

37. File be consigned to registry.

(Phool Singh Saini)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority,
Gurugram
Dated: 27.01.2026