

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

**Complaint no.:** 1136 of 2024  
**Date of filing of complaint:** 02.04.2024  
**Date of Order:** 13.01.2026

Mohmmad Ali Mirza  
**R/o:** - A-702, Green Valley Apartments, Plot No. 18,  
Sector-22, Dwarka New Delhi- 110075

**Complainant**

**Versus**

VSR Infratech Private Limited  
**Regd. office:** A-22, Hill View Apartment, Vasant Vihar,  
New Delhi-110057

**Respondent**

**CORAM:**  
Shri Arun Kumar

**Chairman**

**APPEARANCE:**  
Shri Sanjeev Kumar Sharma (Advocate)  
Ms. Shriya Takkar and Ms. Meenal Khanna (Advocates)

**Complainant  
Respondent**

**ORDER**

1. The present 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 to the allottees as per the agreement for sale executed inter-se them.

**A. Unit and Project related details:**

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

S. No.	Particulars	Details
1.	Name of the project	68 Avenue, Sector- 68, Gurugram
2.	Project area	3.23 acres
3.	Nature of the project	Commercial (Office)
4.	DTCP license no. and validity status	4 of 2012 dated 23.01.2012
5.	Name of licensee	Yad Ram and two others
6.	RERA Registered/ not registered	119 of 2017 dated 28.08.2017
7.	Unit No.	05B/20, 5 <sup>th</sup> floor, Block B (As per page no. 27 of the reply)
8.	Unit area admeasuring	250.080 sq. ft. (super area) (As per page no. 27 of the reply)
9.	Date of booking	08.05.2014
10.	Date of Allotment	26.05.2014
11.	MOU	26.05.2014 (As per page no. 31 of the reply)
12.	Addendum agreement to MoU dt. 26.05.2014	26.05.2014
13.	Assured returns clause as per MoU dated 26.05.2014	<b>Article 2 of MOU</b> <b>2. ASSURED RETURN</b> "2.1 It is hereby agreed and undertaken by the Developer that till the <b>notice of offer of possession is issued, the Developer shall pay to the Allottee an Assured Return at the rate of Rs.77.12/- (Rupees Seventy-Seven and paise twelve Only) per sq. ft. of super area of premises per month (hereinafter referred to as Assured Return).</b> The Assured Return shall be subject to tax deduction at source, which



		<p>shall be payable on due date of every English Calendar month on due basis.</p> <p>.....</p> <p><b>2.3 Once the notice for offer of possession is issued, the developer shall be immediately ceased to pay the assured return to the Allottee and the Allottee shall be free to use the premises for his own or lease to any third party in terms of clause 2 of this MOU. It is however clarified that the lease deed shall be executed strictly as per the draft provided by the developer.</b></p> <p><b>2.4 It is categorically agreed and understood between the parties hereto that once the notice for offer off possession is issued/or offered for lease, the developer shall stand completely discharged, absolved and relieved of all responsibilities and obligations under this MOU including the liability to give assured return.”</b> (As per page no. 35 of the reply)</p>
14.	Assured returns paid by respondent to complainant from June,2014 to December,2017	<b>Rs.7,46,351/-</b> (As per pleadings of respondent on page no. 17 of the reply and as per statement on page no. 43 of the reply)
15.	Basic Sale consideration as per MoU dated 26.05.2014 [exclusive of EDC/IDC, interest free maintenance security, power backup, service tax, VAT, such other levies/cesses as may be imposed by any statutory authority.	<b>Rs. 20,00,640/-</b> (As per page no. 33 of the reply)
16.	Amount paid by the complainant	<b>Rs. 20,00,000/-</b> (As per termination letter on page no. 52 of the reply)



	[Full consideration before entering into MoU]	[As per Schedule 1 - Payment Plan- Annexed with MoU dated 26.05.2014 - Rs.72,148/- balance of agreed sales consideration charges to be paid on offer of possession + Service tax + VAT +IFMS +power backup charges + stamp duty, registration & other charges as defined in MoU.]
17.	Occupation certificate	02.08.2019 (As per page no. 98 of the reply)
18.	Offer of Possession	Not offered
19.	Termination Letter	11.02.2022 [On account of failure to pay outstanding dues amounting to Rs.6,87,589/-] (As per page no. 51 of the reply)
20.	Email Communication regarding address change, due payment, possession and complainant not interested in refund but in possession	Page no. 14-20 of the complaint
21.	Legal Notice by complainant to respondent to set aside termination notice dt. 11.02.2022 and handover possession along with DPC, AR, compensation or refund paid-up amount with interest.	01.04.2022 [As per page no. 33 of the complaint]
22.	Copy of TDS Certificate	Rs.82,947/- deposited as TDS [As per TDS Certificate placed with additional facts placed by respondent on 21.05.2025]

### B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That upon the representation by the respondent and advertisement done in said behalf, the complainant purchased a commercial unit no. 05B fifth floor, admeasuring 250.08 sq. ft. in the Project i.e., "68 Avenue" located at Sector 68, Badsahapur, Gurgaon floated by the respondent and on the inducement that the possession of the unit purchased shall be handed over on time with all amenities as promised. He further undertook to pay Rs.77.12/- per sq. ft. per month as the assured return from the date of MOU entered into by both the parties i.e., 26.05.2014 till offer of possession.
- II. That the total cost of the unit purchased from the respondent was @ Rs.8,000/- per sq. ft. exclusive of EDC/IDC, IFMS, VAT etc. the total amount comes out to be Rs.20,00,640/- exclusive of taxes and duties but with service tax. The complainant paid an amount of Rs.5,00,000/- vide receipt dated 08.05.2014 and Rs.15,00,000/- vide receipt dated 20.05.2014 before entering into memorandum of understanding. Against the executed memorandum of understanding only, the respondent was under obligation to pay assured return as stated above.
- III. That the remaining amount if any was to be paid on offer of possession as per schedule 1 of the MOU. Till date no legal offer of possession has been made to the complainant nor any assured return is being paid to the complainant. A legal notice dated 01.04.2022 has already been delivered/ issued to the respondent because the complainant was shocked to receive notice of termination dated 11.02.2022 of the shop in place of offer of possession. The respondent terminated the unit on account of illegal amount demanded @ Rs.6,87,589/- from the complainant. The respondent otherwise was under obligation to pay either assured return



or delay possession charges, which were automatically to be paid u/s 18 of the Act, 2016. There was nothing left to be paid except EDC/IDC and IFMS @ Rs.150/- per sq. ft. to be paid by complainant at the time of offer of possession. The cancellation is also challenged u/s 11(5) of the Act, 2016.

**C. Relief sought by the complainant:**

4. The complainant has sought following relief:
  1. The illegal cancellation of unit shall be directed to be restored and refund of the amount along with interest be paid to the complainant immediately.
5. 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:**

6. The respondent has contested the complaint on the following grounds:
  - I. That present reply on behalf of respondent is being filed by Mr. Chetan Swara who is the authorized signatory of respondent and has been authorized vide board resolution dated 23.11.2021 to institute, sign, file and verify the present reply, sign affidavit/ applications, execute Vakalatnama in favour 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.
  - II. That the complainant made an application for provisional allotment of a unit in the project developed by the respondent known as 68 Avenue. It is submitted that the complainant herein opted for the assured return scheme. Accordingly, the complainant was allotted unit no. 05B/20 on the fifth floor, tentatively having a super area of approx. 250.08 sq. ft.

- III. That one of the offers made by the respondent at that point of time was that the unit would have the benefit of assured return till the notice for offer of possession subject to force majeure conditions and other conditions mentioned in the MOU. The complainant accordingly entered into an MOU dated 26.05.2014 with the respondent determining all the rights and liabilities of the parties.
- IV. That as per the (MOU) the price of the unit for an area admeasuring approx. 250.08 sq. ft. was Rs.20,00,640/- which works out at a sale price of Rs.8,000/- per sq. ft. It is pertinent to mention the price of the unit was exclusive of Interest-Free Maintenance Security (IFMS), Electricity Connection Charges, Power backup charges, Air Conditioning Charges, service tax and such other levies/cesses/VAT as may be imposed by any statutory Authority.
- V. That thereafter the parties have also entered into an addendum, dated 26.05.2014 to the MOU, dated 26.05.2014 wherein the clause 3.1 of the MOU was amended thereby specifying the amount liable to be returned to the allottee in the event the allottee exercises the option of the buy-back.
- VI. That as per the addendum and on a bare perusal of the aforementioned, it is evident that complainant can only exercise the option of the buyback till 3 years from the date of the MOU, i.e., till 26.05.2017 and not later than that. It is an admitted fact that the complainant had not exercised the option of the buy-back even till the date of filing the present complaint before this Hon'ble Authority and hence, the complainant is not entitled to refund of the amount paid under the MOU.



- VII. That the complainant made the entire payment for the said unit in question as per the payment plan opted by the complainant. However, in addition to the above the complainant was also supposed to make other payments towards the Interest-Free Maintenance Security (IFMS), Electricity Connection Charges, Power backup up charges, Air Conditioning Charges, IFCRF, GST Stamp Duty, Registration and such other charges as per the MOU to the tune of Rs.7,18,280/. Further, the complainant is also liable to pay bulk electricity and maintenance charges.
- VIII. That 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 would be entitled to the benefit of assured returns as per the terms of the MOU. It is also pertinent to mention that the physical possession of the unit was required to be handed over to the complainant only on the specific request in any manner whatsoever as per the terms of the MOU.
- IX. 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.77.12/- per sq. ft. of the super area till the notice of possession is issued. However, the payment of assured return was subject to the force majeure clause as provided under clause 6.1 of the MOU and other clauses of the MOU.
- X. That from the bare perusal of the abovementioned clause it becomes quite evident that the complainant was entitled to assured return subject to force majeure conditions in developing the said project. The complainant was entitled to assured return at the rate of Rs.77.12/- per



sq. ft. of the super area till the notice of offer of possession. It is submitted that the notice of offer of possession/fit-outs was issued to the complainant the respondent company has already paid an amount of Rs.7,46,351/- towards the assured returns from June, 2014 till December, 2017 as per agreed terms under the MOU.

- XI. That since the complainant had miserably failed to come forward to clear his outstanding dues and take possession of the unit, the respondent company was constrained to terminate the allotment of the complainant vide letter dated 11.02.2022. It is also pertinent to mention that the complainant was well aware of the fact that the unit has been terminated however has failed to approach this Authority and has approached the commission lately after the lapse of more than 2 years from the date of cancellation.
- XII. That the respondent is not liable to pay any amount towards assured return as the banning of Unregulated Deposit Scheme Act, 2019 (the "BUDS Act") was notified by the Government of India on 31.07.2019 effective from 21.02.2019. As a consequence of the above, the assured return linked to sale consideration and the assured rental linked to the leasing arrangement as contemplated under the said MOU falls under the ambit of deposit and the same falls under the ambit of the Unregulated Deposit Scheme. In pursuant to the provisions of Section 3 of the BUDS Act, all unregulated deposit schemes have been barred and all such transactions which fall under the ambit of unregulated deposit schemes have to be stopped. In terms of clause 6.10 of the said MOU, all such provisions of the said MOU are void, illegal and unenforceable under the BUDS Act, 2019. Accordingly, clauses 3, 4 and all other similar clauses of



the said MOU, to the extent inconsistent with the provisions of the said Act, have become void, illegal and unenforceable and shall be deemed to be deleted so to conform to applicable laws, without any liability on either party.

- XIII. That since the possession was offered to the complainant on the respondent is under no obligation to pay an assured return to the complainant.
- XIV. That the occupation certificate was duly received by the respondent on 02.08.2019 and the respondent has admittedly paid an assured return to the tune of Rs.7,46,351/-. It is submitted that the respondent despite facing the force majeure conditions has already paid the assured return to the tune of Rs.7,46,351/- to the complainant. The payment of the assured return was stopped because of force majeure conditions and also due to the enactment of the BUDS Act, 2019. It is submitted that this Hon'ble Authority vide its order dated 26.05.2020 has invoked the force majeure clause.
- XV. That the complaint is liable to be dismissed in view of the preliminary objections set out hereinafter. It is submitted that since the preliminary objections are of a jurisdictional nature which goes to the root of the matter, and as per the settled law, the same should be decided in the first instance. It is only after deciding the question relating to the maintainability of the complaint that the matter is to proceed further. The following preliminary and jurisdictional objections are being raised for the dismissal of the complaint.
- XVI. That the complaint filed by the complainant is baseless, vexatious and is not tenable in That the MOU was entered into between the parties and, as

such, the parties are bound by the terms and conditions mentioned in the said MOU. The said MOU was duly signed by the complainant after properly understanding each and every clause contained in the MOU. The complainant was neither forced nor influenced by the Respondent to sign the said MOU. It was the complainant who after understanding the clauses signed the said MOU in their complete senses.

- XVII. That time was never an essence of the contract and MOU contains elaborate terms and conditions that govern the allotment of the unit to complainant.
- XVIII. That the respondent after completing the construction had applied for the issuance of occupation certificate in the office of the Director General, Town & Country Planning Department, Haryana vide application dated 28.03.2018. The construction of the project was completed and the respondent herein had applied for the occupation certificate, the respondent herein sent a letter to the complainant requesting them to clear their dues and start the process of fit-outs. It is submitted that the OC was granted on 02.08.2019 after due verification and inspection. The complainant was duly informed about the receipt of occupation certificate and despite repeated requests he did not come forward to take possession of the unit as after clearing his dues and thus, was in default of his obligations under Sec 19(10) of Act, 2016.
7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority:**

8. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

**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 completed territorial jurisdiction to deal with the present complaint.

**E.II Subject matter jurisdiction**

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

*Section 11(4)(a)*

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

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

10. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be

decided by the adjudicating officer if pursued by the complainant at a later stage.

11. 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. (Supra) and reiterated 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."*

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

**F. Findings regarding relief sought by the complainant.**

- F. I The illegal cancellation of unit shall be directed to be restored and refund of the amount along with interest be paid to the complainant immediately.**

13. The complainant was allotted a unit bearing no. 05B, 5<sup>th</sup> Floor, in '68 Avenue', vide allotment letter dated 26.05.2014. A memorandum of understanding was executed between the parties on 26.05.2014 itself, vide which a unit bearing no. 05B, 5<sup>th</sup> Floor, admeasuring 250.080 sq. ft. (super area) was allotted to him. He has paid an amount of Rs.20,00,000/- against the total sale consideration of Rs.20,00,640/-. The complainant has opted for a payment plan as per which a payment of Rs.72,148/- being balance of agreed sale consideration has to be made on offer of possession along with service tax, VAT, IFMS @Rs.150/- per sq. ft., power back up charges, stamp duty, registration and other charges as applicable and defined in the memorandum of understanding.
14. The respondent has obtained the occupation certificate in respect of the allotted unit of the complainant on 02.08.2019 but the unit was never offered to the complainant. Thereafter, the respondent has sent a termination letter dated 11.02.2022 on account of failure to pay the outstanding dues of Rs.6,87,589/- and it was mentioned in the said letter that pursuant to the termination, the refund of the paid-up amount after necessary deductions would be processed on further sale of the unit. Now, the question before the authority is whether this cancellation is valid or not?
15. The authority has gone through the payment plan, which was duly signed by both the parties, which is reproduced for ready reference: -

S. No.	Payments to be made
(i)	Rs.72,148/- being balance of agreed sales consideration on offer of possession + Service Tax + VAT + IFMS @Rs.150/- per sq. ft. + power back up charges + Stamp duty, registration and other charges as applicable and defined in this MOU/ Space Buyer's Agreement

16. It is matter of record that the complainant booked the subject unit under the above-mentioned payment plan and paid an amount of Rs.20,00,000/- towards total sale consideration of Rs.20,00,640/- which constitutes 99.96% of the total sale consideration and he has paid the last payment only on 08.05.2014. The respondent has obtained the occupation certificate in respect of the allotted unit of the complainant on 02.08.2019 but the possession was never offered to the complainant.
17. Thus, the Authority is of the view that the complainant has abided the agreed payment plan and made almost 100% sale consideration way back on 08.05.2014. Thus, the cancellation letter dated 11.02.2022 is invalid and hereby quashed.
18. Now, the complainant herein is seeking refund the entire amount along with interest under the provisions of the Act, 2016 and the Rules 2017 made thereunder. The question arises before the Authority whether the complainant is entitled to refund the entire amount paid by the complainant with or without deduction of earnest money?
19. On consideration of all the documents placed on record and submissions made by the parties, the Authority is of the view that as the complainant has paid almost entire sale consideration on the booking itself and abided by the agreed payment plan, thus, the complainant is entitled to refund of the entire paid-up amount along with interest. Thus, the Authority directs the respondent to refund the paid-up amount of Rs.20,00,000/- received by it along with interest at the rate of 10.80% p.a. as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual realization of the amount. An amount of

Rs.7,46,351/- paid to the complainants on account of Assured returns shall be adjusted.

**G. Directions of the Authority**

20. Hence, the Authority hereby passes this order and issue 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 refund the paid-up amount of Rs.20,00,000/- received by it along with interest at the rate of 10.80% p.a. as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual realization of the amount after adjusting an amount of Rs.7,46,351/- already paid on account of Assured returns.
  - ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
21. Complaint as well as applications, if any, stand disposed off accordingly.
22. File be consigned to registry.

  
(Arun Kumar)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.01.2026