BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of decision: 13.01.2026

NAME OF THE BUILDER		**KS Propmart Private Limited**	
PROJECT NAME		**"Park Street", Sector-85 Gurgaon**	
Sr. No.	**Case No.**	**Case title**	**APPEARANCE**
1.	CR/2748/2025	Deepika Walian V/s KS Propmart Private Limited	Rajan Kumar Hans, Adv. (Complainant) Jagdeep Yadav, Adv. (Respondent)
2.	CR/2749/2025	Deepika Walian V/s KS Propmart Private Limited	Rajan Kumar Hans, Adv. (Complainant) Jagdeep Yadav, Adv. (Respondent)

CORAM:
Shri. Arun Kumar **Chairperson**

ORDER

1. This order shall dispose of all the 2 complaints titled as above filed before this Authority in Form CRA under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the projects, namely, 'Park Street" at Sector 85, Gurgaon' being developed by the same respondent promoter "M/s KS Propmart Private Limited".

3. The details of the complaints, reply to status, unit no., date of agreement and allotment, due date of possession, offer of possession and relief sought are given in the table below:

Project Name and Location	"Park Street" at sector 85, Gurgaon, Haryana.
Nature of the project	Commercial complex
DTCP License no.	100 of 2013 dated 02.12.2013 **Valid/renewed up to-** 01.12.2019 **Licensee-** M/s K.S Prop Mart Pvt. Ltd
RERA registered or Not	**Registered** **Vide no.** 41 of 2019 dated 30.07.2017 **Valid/renewed up to-** 30.06.2023
Assured return clause	**3. Assured Return** **3.1.1.** "The Developer shall pay to the Allottee a pre-possession lease rental with effect ***from 03.10.2021 till Application of Occupation Certificate is filed at the rate of Rs. 81.66/- (Rupees Eighty-One and Paisa Sixty-Six Only) per sq. ft.*** (hereinafter interchangeably referred to as the 'Pre-Possession Lease Rental'). Any GST or other indirect Taxes if levied by any Government Authorities) on this pre-possession Lease shall be borne by the Second Party." **3.2** ***After possession, subject to receipt of Possession charges by the Developer, the Developer shall pay to the Allottee a monthly lease rental @ Rs. 78/- (Rupees Seventy-Eight Only) per sq. ft. (hereinafter referred to as the 'Post-Possession Lease Rental') after receiving charges till One year or First lease, whichever is earlier.*** (Pre-Possession Lease Rental and Post-Possession Lease Rental collectively.
Occupation certificate	Not obtained
Offer of possession	Not offered

S No	Complaint No., Case Title and Date of filing of complaint	Unit No.	Date of execution of MOU and agreement for sale	Due date of possession, offer of possession	Total Consideration / Total Amount paid by the complainants (In Rs.)
1.	**CR/2748/2025** **Deepika Walian VS KS Propmart Private Limited** **D.O.F:** 10.06.2025 **R.R:** 21.10.2025	F-43G (commercial space tentative measuring 263.29 sq. ft.) (page no. 36 of complaint)	**MOU:** 02.03.2022 (page no. 39 of complaint) **BBA:** 06.05.2022 (page 53 of complaint)	**Due Date:** 06.10.2027 **Occupation certificate:** Not obtained **Offer of possession:** Not offered **Cancellation letter:** 07.06.2025 (page no. 103 of reply)	**TSC: -** Rs.28,35,896/- (page no. 36 of complaint) **AP: -** Rs.23,43,658/- (page no. 13 of complaint) **Assured return paid till Feb.2022:** Rs. 1,07,500/-
2.	CR/2749/2025 Case titled as Deepika Walian VS KS Propmart Private Limited **D.O.F:** 10.06.2025 **R.R:** 21.10.2025	F-43B (commercial space tentative measuring 263.29 sq. ft.) (page no. 36 of complaint)	**MOU:** 02.03.2022 (page no. 39 of complaint) **BBA:** 06.05.2022 (page 53 of complaint)	**Due Date:** 06.10.2027 **Occupation certificate:** Not obtained **Offer of possession:** Not offered **Cancellation letter:** 07.06.2025 (page no. 658 of reply)	**TSC: -** Rs.28,35,896/- (page no. 36 of complaint) **AP: -** Rs.23,43,658/- (page no. 13 of complaint) **Assured return paid till Feb.2022:** Rs. 1,07,500/-

The complainant herein is seeking the following relief(s):

1. Pass an appropriate award directing the Respondent to pay the Pending Assured return of Rs. 8,38,500/- (Rupees Eight Lakhs Thirty-Eight Thousand and Five Hundred) (Due

up to the time of filing the case) and any other amount further which becomes Due till the filing of the application of Occupation Certificate. 2. Pass an appropriate award quashing the pre cancellation letter dated 23.05.2025 and to direct the respondent not to raise the demand of Rs. 4,63,803/- for unsubstantiated increase in area.(Justification :- No Layout Plan provided by respondent in Agreement to Sell) 3. Pass an appropriate award quashing the illegal and unjustified demand for Preferential Location Charges (PLC) amounting to Rs. 1,84,073/-, as raised by the Respondent in its pre-cancellation letter dated 23.05.2025. (Justification :- No Layout Plan provided by respondent in Agreement to Sell) 4. Pass an appropriate award directing the Respondent to restrain from cancelling the allotment and creating any third-party rights over the Complainant's unit

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

Abbreviation	**Full form**
TSC-	Total Sale consideration
AP-	Amount paid by the allottee(s).
RR-	Reply Received
AR-	Assured Return
BBA-	Builder Buyer Agreement

4. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of Section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act, the rules and the regulations made thereunder.

5. The facts of both the complaints filed by the complainant/allottee are also similar. Out of the above-mentioned cases, the particulars of lead case ***CR/2748/2025 titled as "Deepika Walian V/s KS Propmart Private Limited"*** are being taken into consideration for determining the rights of the allottees qua assured return and quashing the illegal demands.

Unit and project related details:

6. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, date of buyer's agreement etc, have been detailed in the following tabular form:

CR/2748/2025 titled as "Deepika Walian V/s KS Propmart Private Limited"

S. No.	Heads	Details
1.	Name and location of the project	"Park Street" at sector 85, Gurgaon, Haryana
2.	Project area	2.85 acres
3.	Nature of project	Commercial
4.	RERA registered/not registered	**Registered** **Vide no.** 41 of 2019 dated 30.07.2017 **Valid/renewed up to-** 30.06.2023
5.	DTCP license no. & validity status	100 of 2013 dated 02.12.2013 **Valid/renewed up to-** 01.12.2019 **Licensee-** M/s K.S Propmart Pvt. Ltd.
6.	Date of allotment	24.01.2022 (page 36 of complaint)
7.	Date of MOU	02.03.2022 (page no. 39 of complaint)
8.	Unit Nos. and area	F-43G (Commercial space tentative measuring 263.29 sq. ft.) (page no. 36 of complaint)
9.	Assured Return clause	***3. Assured Return*** ***3.1.1.*** *"The Developer shall pay to the Allottee a pre-possession lease rental with effect* ***from 03.10.2021 till Application of Occupation Certificate is filed at the rate of Rs. 81.66/- (Rupees Eighty-One and Paisa Sixty-Six Only) per sq. ft.*** *(hereinafter interchangeably referred to as the 'Pre-Possession Lease Rental'). Any GST or other indirect Taxes if levied by any Government Authorities) on this pre-possession Lease shall be borne by the Second Party."* **3.2** ***After possession, subject to receipt of Possession charges by the Developer, the***

		Developer shall pay to the Allottee a monthly lease rental @ Rs. 78/-(Rupees Seventy Eight Only) per sq. ft. (hereinafter referred to as the 'Post-Possession Lease Rental') after receiving charges till One year or First lease, whichever is earlier. (Pre-Possession Lease Rental and Post-Possession Lease Rental collectively
10.	Agreement for Sale	06.05.2022 (page 53 of complaint)
11.	Total sale consideration	Rs.28,35,896/- (page no. 36 of complaint)
12.	Amount paid by complainant	Rs.23,43,658/- (page no. 35 of complaint)
13.	Assured Return Paid till February 2022	Rs. 1,07,500/- (page 16 of complaint)
14.	Due date of possession	NA
15.	Date of receiving the Occupation certificate	Not obtained
16.	Date of offer of possession to the complainant	Not offered

B. Facts of the Complaint:

7. The complainant has made the following submissions:

a) That the project in question is known as "Park Street ", located at Sector-85, Village Badha, Tehsil-Manesar, Distt. Gurugram, Haryana. The unit in question is Retail Shop No. 43-G, measuring Super area of 263.29 sq. ft.

b) That the complainant expressed a desire to acquire a Commercial unit for personal use and subsequently got connected with the respondent, who persuaded her to invest in a project titled "Park Street." On 09.08.2021, the complainant submitted an application form along with a booking amount of Rs. 2,00,000/- through Cheque No. 000011 for the allotment of Unit No. F-13A in the 'Park Street' project, which had a super area of 691.48 sq. ft.

this booking amount was duly acknowledged and accepted by the respondent vide its receipt dated 11.08.2021, thereby confirming the allotment of Unit No. F-13A in the 'Park Street' project in favour of the complainant.

c) That, just two days later on 11.08.2021, the respondent, through a subsequently issued payment receipt, altered the complainant's duly assigned Unit No. F-13A (which had a super area of 691.48 sq. ft.) to two smaller Units numbered F-43B and F-43G (each with a super area of only 263.29 sq. ft.). This change occurred because the original Unit F-13A was found to have no physical presence within the project, resulting in a decrease of the total allotted area from 691.48 sq. ft. to 526.58 sq. ft.(collectively), thereby diminishing the super area by 164.90 sq. ft. for both the units.

d) That this complaint only pertains to the unit no. F 43-G and a separate compliant vide RERA-GRG-2749-2025 titled as Deepika Walian vs M/s K S Propmart is also filed in front of this Hon'ble Authority, for the other unit no. F-43B. That, on 24.01.2022, the respondent officially issued the Allotment Letter, whereby the Complainant was formally allocated Shop/unit number F-43G, which has a super built-up area of 263.29 square feet, for a Total Sale Consideration of Rs.28.35.896/-. This Allotment Letter also confirmed the receipt of payment amounting to Rs. 21,88.317/- and with confirmation that there were no outstanding dues at the time the allotment letter was issued.

e) That, on 02.03.2022, a Memorandum of Understanding (MOU) was signed between the respondent and the complainant. As per the clause 3.1.1 of the MOU, the respondent committed to providing a guaranteed assured

return of Rs.81.66 per sq. ft. of super area for each month starting from 03.10.2021 until the application for the occupation certificate is submitted. In the numeric terms the assured return of Rs.21,500/- per month was committed to be paid by the respondent.

f) That as per clause 3.3 of the MoU the respondent shall pay allottee lease rental till the application for offer of possession is made to the complainant.

g) That 06.05.2022 the respondent and the complainants entered into a registered agreement to sale. According, to clause 1.2 of the ATS the basic sales price of the unit was determined to be Rs.26,80,555/- of which Rs.21,88,317/- was confirmed as received in clause 1.13 of the ATS which is around 82% of the total sale value.

h) That collecting more than the 10% of the total sale value directly violated Section 13 of the Act, 2016 which clearly states that a promoter is prohibited from collecting over 10% of the total cost of an apartment, plot, or building as an advance payment or application fee unless a registered written agreement for sale has been executed. The actions of the respondent in relation to the breaches of Section 13 warrant a severe penalty against the respondent builder.

i) The respondent deliberately omitted any floor plan or payment plan from the agreement to sell, which would have clearly specified the unit's position within the project.

j) That the total sale price of the specified unit has been established at Rs.28,35,869/- as outlined in Clause 1.2 of the agreement to sale dated 06.05.2022.

k) That the complainant persisted in making payments for both units as a whole, while the respondent lacking transparency continued to issue consolidated payment receipts without distinctly outlining the divisions of amounts allocated to each separate unit. Thus, practice resulted in confusion and ambiguity concerning the distribution of payments.

l) That on demand of the respondent the complainants have already paid an amount of Rs.23,43,658/- which constitutes 82% of the total sale price of the unit, inclusive of taxes and cess for the said unit and nothing is due towards the complainant as on date.

m) That the main grievance of the complainant is that although the complainant has consistently met its obligation to remit payment to the respondent punctually, it is the respondent who has failed to meet its obligation to deliver the assured return in accordance with the terms and conditions outlined in the MoU. The respondent was obligated to pay the assured return at Rs.81.66/- per sq. ft. from 03.10.2021 until the application for the occupation certificate is submitted as specified in clause 3.1.1 of the MoU. Nevertheless, the respondent has not made these payments to the complainant for a duration exceeding 39 months. The pending assured return to be paid by the respondent till the date of filing this complaint amounts to Rs.8,38,500/-.

n) That the complainants other primary grievance emerged on 23.05.2025 when the respondent sent a per-cancellation letter to the complainant in which they made an unlawful demand of Rs.6,96,005/- threatening to cancel the unit if the amount was not paid.

o) That in the aforesaid letter dated 23.05.2025 the respondent has unilaterally notified the complainant about an increase in the super area

of the complainants unit by 29.75 sq. ft. without providing any adequate justification or explanation. This has led to an increase in the BSP by Rs.4,46,250/- for a single unit. This action may evidently be a tactic employed by the respondent to extract additional funds from the complainant.

p) Furthermore, the aforementioned letter dated 23.05.2025, the respondent has unilaterally informed the complainant about the imposition of the PLC amounting to Rs.1,84,073/- which was not referenced in the agreement to sale dated 06.05.2022. The complainant is unable to verify the location of the commercial unit as the respondent has unlawfully neglected to include the layout plan in the agreement for sale.

C. Relief sought by the complainants:

8. The complainant herein has sought following relief(s):

I. Pass an appropriate award directing the respondent to restrain from cancelling the allotment and creating any third-party rights over the complainant's unit.

II. Pass an appropriate award quashing the pre cancellation letter dated 23.05.2025 and to direct the respondent not to raise the demand of Rs. 4,63,803/- for unsubstantiated increase in area.

III. Pass an appropriate award quashing the illegal and unjustified demand for Preferential Location Charges (PLC) amounting to Rs. 1,84,073/-, as raised by the respondent in its pre-cancellation letter dated 23.05.2025.

IV. Pass an appropriate award directing the respondent to pay the Pending Assured return of Rs. 8,38,500/- and any other amount further which becomes due till the filing of the application of occupation certificate.

9. On the date of hearing, the authority explained to the respondent /promoters about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

10. The respondent has contested the complaint on the following grounds vide its reply dated 21.10.2025:

a) That the complainant made an application for provisional allotment of a unit in the project developed by the respondent, now as VSR 85 Avenue, which is known as Park State with a wide application form dated 09.08.2021. That pursuant to the application form, the respondent company vide allotment letter dated 24.01.2022 allotted unit bearing no. F-43 G on the First floor, having a tentative super area of 263.29 sq. Ft for a basic sale price of Rs.26,80,555/- inclusive of Rs.1,55,341/- towards EDC/IDC.

b) That one of the offers made by the respondent then was that the unit will have a benefit of pre-possession lease rental from the application for occupation certificate is filed for the retail block, subject to force majeure condition and other conditions mentioned in the MOU. That the complainant accordingly entered into an MOU dated 02.03.2022 with the respondent from the retail unit F-43B, tentatively admeasuring an area of 263.39 sq. ft. determining all rights and liabilities of the parties.

c) That the total agreed consideration for allotment as per MOU is Rs.26,80,555/-exclusive of IDC, EDC. IFMS, ACC, Firefighting charges (FFC), Power back up charges, IFCRF, applicable taxes such as services tax/GST and such other levies/cesses as may be imposed by any statutory

authority. The complainant made a payment of Rs.21,88,317/-including GST.

d) That there was no timely 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 the assured return as per the MOU. It was also agreed that the respondent will pay pre-possession lease rental 03.10.2021 at the rate of Rs.81.66/- per square foot of the super area till the application for the occupation certificate is filed for the retail block. However, the payment of an assured return was subject to a force majeure clause as provided under clause 6 of the MOU.

e) That the complainant was entitled to pre-possession lease rental, subject to force majeure conditions in the development of the said project. The construction and development of the project were affected due to various force majeure conditions. The construction and development of the project were affected due to force majeure conditions. However, the payment of the assured return was subject to the Force Majeure clause as provided under clause 6 of the MOU.

f) The company faced the problem of subsoil water, which persisted for 6 months and hampered excavation and construction work. The problem persists still and we are taking appropriate action to stop the same. The company has been facing labour problems 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. The infrastructure facilities are yet to be created by a competent authority in this sector, which is also a

reason for the delay in the overall project. The drainage, sewerage and other facility work have not yet commenced by the competent authority. That there was a stay on construction in furtherance of the direction passed by the Hon'ble NGT. Furtherance of the above-mentioned order passed by the Hon'ble NGT. The sudden surge requirement for labour requirements and then the sudden removal has created a vacuum for labour in the NCR region. The projects of not only the respondent but also of all the other Developers/builders have been suffering due to such a shortage of labour, which 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.

g) Moreover, due to the active implementation of social schemes like the National Rural Employment Guarantee and Jawaharlal Nehru National Urban Renewal Mission, there was also more employment available for labourers in their hometown, even though the NCR region was itself facing a huge demand for labour to complete the project. The said fact of labor 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 labor shortage, on which the whole construction industry so largely depends and on which the respondent has no control whatsoever.

h) This acute shortage of sand not only delayed the project of the respondent but also shot up the prices of sand by more than a hundred per cent, causing huge losses to the respondent. That same further caused a huge delay in the project and stalled various parts and agencies at work in advanced stages. For now, the respondent had to redo the said work, causing a huge financial burden on the respondent, which has never been transferred to the complainants or any other customers of the project.

i) That in addition, the current Govt. on 8th Nov 2016 declared demonetization which severely impacted the operations and project execution on the site as the laborers in the 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 laborers not accepting demonetized currency after demonetization.

j) That in July 2017, the Government. India further introduced a new regime of taxation under the Goods and Services Tax, which further created chaos and confusion owing to a lack of clarity in its implementation. That ever since July 2017 since all the materials required for the project by the company were to be taxed under the new regime it was an uphill task for the vendors of building materials along with all other necessary materials required for the 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.

k) That the Government of India declared a nationwide lockdown due to the COVID-19 Pandemic, effective from 24th March 2020 at midnight. That the construction and development of the project were affected due to this as well. The Authority has issued its order dated 26.05.2020, invoking the force majeure clause.

l) That the respondent, despite facing the above force majeure conditions, has admittedly received the assured return to a sum of Rs.2,32,471/- for a period of a total of 16 months. That the payment of the Assured Return was stopped due to the Force Majeure Conditions, which continued, and are continuing. That the payment of pre-possession lease rental was stopped primarily because of the COVID-19 pandemic. The hardships being faced due to the prevailing COVID-19 pandemic are not a hidden fact.

m) That as per the terms and conditions contained in the Allotment Letter and the Memorandum of Understanding (MOU), and pursuant to mutual understanding and consent between the parties, the answering Respondent Company duly executed and got registered an Agreement to Sell dated 06.05.2022 in favor of the complainant in respect of unit no. F-43B, admeasuring tentative super area of 263.29 sq. ft. The said unit was allotted and accepted by the complainant without any protest or demur at any point in time. The complainant has never raised any objection alleging that the unit allotted to him differed from that mentioned in the application form. On the contrary, the complainant, through his conduct, has unequivocally accepted Unit No. F-43B as his final allotment, and all requisite documents pertaining thereto were executed between the

parties on mutual consent. Hence, the Complainant is now estopped from disputing or challenging the said allotment.

n) That, as per the agreement for sale executed between the parties on 06.05.2022, the possession of the retail unit was supposed to be handed over to the Complainant within a period of 60 months with an additional grace of 5 months from the date of execution of the agreement, subject to force majeure conditions.

o) That as for the above-mentioned clause, the possession of the unit has to be handed over to the complainant within 60 months, with an additional grace of 5 months from the date of execution of the agreement to sale that which agreement for sale was executed between the parties on 06.05.2022, and hence the due date for delivery of possession comes to 06.10.2027. Further, the aforementioned clause would clearly show that only symbolic/constructive possession is to be handed over to the complainant since the unit booked by the complainant is for leasing purposes.

p) That in compliance with the regulatory shift, the respondent company duly revised the building construction plan as per the guidelines and approval from DTCP, Haryana. This revision necessitated changes in the layout and areas of all units within the project, including the unit provisionally allotted to the complainant.

q) That it is pertinent and specifically clarified and agreed by the parties that, pursuant to the revision in the Transit Oriented Development (TOD) Policy in the year 2022, the subject project was brought under the ambit of the non-TOD Policy. Consequently, the building plans were revised and duly approved by the office of the Director, Town and Country Planning

(DTCP), Haryana. Owing to the said policy change and the resultant approval process, the completion of the project has been delayed, a fact that is duly acknowledged and accepted by the Purchaser/Second Party. It is further agreed that such delay, being attributable to statutory changes and approvals beyond the control of the Developer/First Party, shall not be construed as a default, breach, or deficiency in service on the part of the Developer/First Party in any manner whatsoever. The Parties further agree that the period of possession stipulated under this Agreement shall automatically stand extended by the period equivalent to such delay, without imposing any liability, penalty, or adverse consequence upon the Developer/First Party.

r) That, in the absence of any written acceptance or agreement from the complainant, the respondent refrained from making any changes to the area of the complainant's unit. As such, the unit's area remains unchanged and is consistent with the specifications outlined in the Memorandum of Understanding (MOU) executed between the parties.

s) That due to the change in construction policy from Non-TOD to TOD, as notified and implemented by the competent authorities, there arose certain necessary revisions arose in the sanctioned building plan of the project. Consequent to such revision, the sizes of several units within the project, including that of the complainant, were either increased or decreased, depending upon the re-allotment and reconfiguration of the layout approved by DTCP, Haryana.

t) That the respondent acting in good faith and maintaining full transparency, duly issued a letter dated 16.01.2024 to the complainant, thereby intimating him about the proposed revision in the area of his unit

as per the revised building plan. It was clearly communicated that only upon the complainant's acceptance of the said revision would the changes be effected in the records of the respondent company.

u) That the complainant, upon receipt of the said intimation, gave his acceptance for the revised unit area. Accordingly, the area of the complainant's unit was increased from 263.29 sq. ft. to 293.04 sq. ft., only a 29.75 sq ft area increase (approx. 11% of the super area) in line with the approved building plan and in accordance with the applicable TOD policy guidelines. That the respondent company, to place the matter beyond any ambiguity, further issued an intimation letter dated 016.01.2024, which was duly dispatched to the complainant through Speed Post. Said communication clearly reflected the revised area of the complainant's unit, i.e., 293.04 sq. ft. The absence of any objection amounts to implied acceptance of the revised unit area, thereby estopping the complainant from now disputing or challenging the same. In view of the above, the respondent submits that the increase in the complainant's unit area was carried out strictly in compliance with the revised policy and building plan approved by the competent authorities, and only after due acceptance by the complainant himself. Hence, no grievance or cause of action survives in favor of the complainant on this account.

v) That, as per the payment plan, the complainant was supposed to make payment towards EDC/IDC as and when demanded by the respondent company. The respondent company issued a demand letter dated 23.12.2024 towards payment of increased area, EDC/IDC and PLC amounting to Rs.6,96,005/-, and along with the balance sale

consideration, along with interest as on 23.05.2025 amounting to Rs.48,229/-. That since the complainant did not come forward to make the payment, the respondent company again issued a demand letter dated 23.05.2025 towards the payment of Increased Area, EDC/IDC and PLC amount as per the payment plan amounting along with interest amounting to Rs.6,96,005/-, is pending.

w) That as per the Allotment Letter dated 24.01.2022, it is expressly mentioned under the headnote, Point No. 1, that "PLC Charges as applicable" shall be payable by the Allottee. Further, the Agreement to Sale dated 06.05.2022 also explicitly records in Page No. 5, Clause 1.2, Sub-point 1(b) that "PLC Charges as applicable" shall be borne by the Allottee. The Complainant, having signed both the Allotment Letter and the Agreement to Sale, duly accepted these terms and obligations. That the Complainant, despite being fully aware of her contractual obligation to pay the PLC charges, has failed and refused to make the payment, which is in clear violation of the executed agreements. The respondent reserves the right to recover the said charges along with any lawful interest and costs as per the terms of the agreements. The complainant has persistently failed to clear the outstanding dues payable towards the unit allotted in the project. Despite repeated reminders and requests, both oral and written, the complainant has neglected and failed to fulfil his financial obligations under the Memorandum of Understanding and allotment terms. The respondent company, to avoid any coercive action, made several telephonic calls and personal requests to the complainant, urging him to clear the outstanding dues. However, the complainant, despite assurances, neither made the requisite payment nor furnished

any plausible explanation for his default. Finding no other alternative, the respondent company was constrained to issue a formal cancellation letter dated 07.06.2025 to the complainant, clearly intimating him that in case of continued default in clearing the dues, the allotment of his unit would stand cancelled. The said cancellation notice was duly served upon the complainant, yet no response was received from him.

x) That even thereafter, the complainant neither responded nor discharged his financial obligations. Consequently, the respondent company, after providing sufficient opportunity and in compliance with principles of natural justice, again issued a cancellation letter dated 01.05.2025 (reminder -I). Despite the same, the complainant failed to take any corrective steps or regularize his account.

y) That the respondent vide its letter dated 01.05.2025, issued a Reminder–I to the complainant, reiterating its earlier communications and calling upon the complainant to comply with the required formalities as per the Agreement to Sell and the mutual understanding between the parties. The said letter was duly dispatched to the Complainant through Speed Post on 09.05.2025, which was successfully delivered at the address of the Complainant. However, despite receipt of the said communication, the Complainant neither raised any objection nor furnished any reply thereto to date, which clearly establishes that the Complainant has nothing to rebut and has accepted the contents of the said letter by his silence.

z) That the respondent in continuation of its previous communication, again issued a Reminder II dated 09.05.2025 to the complainant through Speed Post, thereby once again calling upon the complainant to comply with its

obligations and to complete the necessary formalities. The said letter was duly received by the Complainant, yet no response or objection was ever raised. The deliberate silence on the part of the Complainant clearly indicates his acceptance of the terms and conditions already communicated by the answering respondent.

aa) That the respondent having received no response to its earlier two reminders, issued a Reminder–III dated 16.05.2025 to the complainant through Speed Post, reminding him once again to fulfil his part of the obligations and formalities. The said communication was also duly served upon the complainant; however, despite repeated reminders, the complainant failed to furnish any reply or compliance. The continuous non-response on the part of the complainant substantiates that the present complaint has been filed as an afterthought, only with the intent to harass and pressurize the respondent.

bb) That the complainant was very well aware that timely payment was the essence of the agreement for sale and the MOU executed between the parties. That the demand by the respondent for EDC/IDC & PLC is as per the Schedule of the payment appended with the MOU, Hence, Being aware about the payment as per the payment plan, the failed to make timely payment and therefore is a chronic defaulter and is liable to pay interest to the respondent company for the delay in payment under Section 19(6) RERA which stated that the complainant is responsible to make the necessary payments in the manner and within time as specified in the agreement and in case of default the complainant is liable to pay interest for delay under section 19(7) of RERA.

cc) That the agreement for sale was entered into between the parties, and as such, the parties are bound by the terms and conditions mentioned in the said MOU and the agreement for sale. The said MOU and the agreement for sale were duly signed by the complainant after properly understanding every clause in the MOU and the agreement for sale. The complainant was neither forced nor influenced by the respondent to sign the said MOU and the agreement for sale. It was the complainant who, after understanding the clauses and the said MOU and the agreement for sale, did so in her complete senses.

11. All other averments made in the complaint were denied in toto.

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

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction

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

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

> ***"Section 11(4) (a)***
> *Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be.*
>
> ***Section 34-Functions of the Authority:***
> ***34(f)*** *to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder."*

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

F. Findings on the relief sought by the complainant.

F.I Pass an appropriate award directing the respondent to restrain from cancelling the allotment and creating any third-party rights over the complainant's unit.

F.II Pass an appropriate award quashing the pre cancellation letter dated 23.05.2025 and to direct the respondent not to raise the demand of Rs. 4,63,803/- for unsubstantiated increase in area.

F.III Pass an appropriate a ward quashing the illegal and unjustified demand for Preferential Location Charges (PLC) amounting to Rs. 1,84,073/-, as raised by the respondent in its pre-cancellation letter dated 23.05.2025.

17. The above-mentioned relief(s) sought by the complainant are taken together being inter-connected.

18. The factual matrix of present case reveals that the complainant was allotted unit no. F-43G, First Floor, in the respondent's project at sale consideration of Rs.28,35,896/- vide allotment letter dated 24.01.2022. A memorandum of understanding (MoU) was signed between the complainant and the respondent on 02.03.2022. Thereafter, a buyer's agreement was executed between the parties on 06.05.2022. The possession of the unit was to be offered within 60 months from the date of execution of agreement and it is further provided in agreement that promoter shall be entitled to unqualified grace period of five months. Therefore, the due date of possession comes out to be 06.10.2027, including grace period of five months being unqualified and unconditional.

19. Upon perusal and submission of complainant it has been found that allotment of booked unit was cancelled by the respondent on 07.06.2025 due to non-payment of outstanding amount of Rs.6,96,005/-. Now, the foremost question which arises before the Authority is that whether the cancellation of the unit of the complainants is valid or not?

20. The Authority observes that the respondent cancelled the unit allotted to the complainant vide cancellation letter dated 07.06.2025 on account of alleged non-payment of outstanding dues amounting to Rs. 6,96,005/-. The respondent has stated that prior to such cancellation, three reminder letters dated 01.05.2025 and a pre-cancellation notice dated 23.05.2025 were issued to the complainant. The respondent has relied upon Clause 9.3 of the Buyer's Agreement dated 06.05.2022, which stipulates that in the event the allottee fails to make payment of the demanded amount and such default continues for a period beyond 30 days after notice, the promoter may cancel the allotment and terminate the agreement after issuing prior intimation.

21. However, the Authority notes that the provisions contained in the Buyer's Agreement cannot override the statutory framework prescribed under the applicable Rules. As per Clause 9.3 of the Model Agreement for Sale under the Rules, 2017, an allottee shall be considered in default only if the default in payment continues for a period beyond ninety (90) days after notice from the promoter. Only upon expiry of the said period of ninety days from the date of notice, and subject to prior intimation of termination, the promoter may proceed with cancellation of the allotment. Clause 9.3 of the Model Agreement for Sale under the Rules, 2017 is reiterated herein for ready reference:

> ***9.3 The Allottee shall be considered under a condition of Default, on the occurrence of the following events:***
>
> *i. In case the Allottee **fails to make payments for two consecutive demands made** by the Promoter as per the Payment Plan annexed hereto, despite having been issued notice in that regard the allottee shall be liable to pay interest to the promoter on the unpaid amount at the rate prescribed in the Rules;*
>
> *ii. In case of Default by Allottee under the condition listed above **continues for a period beyond ninety days after notice from the Promoter in this regard, the Promoter may cancel the allotment** of the Plot/ Unit/ Apartment for Residential/ Commercial/ Industrial/ IT/ any other usage along with parking (if applicable) in favour of the Allottee and refund the money paid to him by the allottee by forfeiting the booking amount paid for the allotment and interest component on delayed payment (payable by the customer for breach of agreement and non-payment of any due payable to the promoter). The rate of interest payable by the allottee to the promoter shall be the State Bank of India highest marginal cost of lending rate plus two percent. The balance amount of money paid by the allottee shall be returned by the promoter to the allottee within ninety days of such cancellation. On such default, the Agreement and any liability of the promoter arising out of the same shall thereupon, stand terminated. Provided that, the promoter shall intimate the allottee about such termination at least thirty days prior to such termination.*

22. In the present case, the record reveals that the last demand raised by the respondent, which allegedly remained unpaid by the complainant, was issued on 01.05.2025. The respondent proceeded to cancel the allotment of the unit

on 07.06.2025, i.e., within 37 days from the date of the said demand. Thus, the respondent has effected the cancellation well before the expiry of the mandatory period of 90 days contemplated under Clause 9.3 of the Model Agreement for Sale prescribed under the Rules, 2017.

23. In view of the above, the Authority is of the considered opinion that the respondent has acted in contravention of the provisions of the Rules, 2017 as well as the principles governing termination of allotment. The premature cancellation of the unit, without allowing the complainant the statutorily prescribed period of ninety days to cure the alleged default, cannot be sustained in the eyes of law. Accordingly, the **alleged cancellation for these reasons is not tenable and is hereby, quashed**. Therefore, the respondents are directed to reinstate the unit of the complainants within 30 days of this order.

24. The complainant further took a plea that the area of the subject unit was increased from 263.295 sq.ft. to 293.04 sq. ft. which the complainant came to know through pre-cancellation letter dated 23.05.2025 issued by the respondent which was without any prior intimation or by taking any written consent from the complainant. On the bare perusal of the record , the Authority observes that as per the builder buyer agreement dated 06.05.2022 the area allotted to the complainant was 263.295 sq.ft. (carpet area) further as per the pre-cancellation letter dated 23.05.2025, the respondent has increased the carpet area of the subject unit to 293.04 sq. ft. i.e. approx..11.3%.

25. 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 charge 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.

26. In view of the above, the Authority has clear observation that there was an increase in the super area which was intimated to the complainant at the time of pre-cancellation letter and not before. The respondent had informed the complainant of increase in usage area of the unit in question vide letter dated 23.05.2025. In the present matter, the builder buyer agreement was executed between both the parties in the year 2022 i.e., after enactment of the Act, 2016. Moreover, the Model Agreement to Sell (The Rules, 2017) provides that increase in the area can be allowed only upto 5%.

27. In view of the above, the Authority is of the view that the respondent has increased the super area as well as carpet area of the allotted unit by approx..11.3% however same is not prescribed as per the Model Agreement to Sell (as per Rules, 2017) and thus, the demand raised by the respondent on account of increase in area is illegal, void and hereby set aside to the extent of charging for increase in carpet area beyond 5% limit as prescribed in the Model Agreement to Sell (as per Rules, 2017) as agreement to sell was executed on 06.05.2022 i.e., after enactment of the Act, 2016 and the Rules of 2017.

28. The objection raised by the complainant with regard to the quashing the illegal and unjustified demand for PLC, the respondent shall not charge the complainant any amount that is not included in the buyer's agreement. Further, relief with regard to not charge PLC is concerned, the description of total price attached forming a part of said builder buyer agreement (page 58 of complaint), the total sale consideration does not include any charges w.r.t PLC. Therefore, the respondent shall not raise any demand on account of PLC.

F.IV Pass an appropriate award directing the respondent to pay the Pending Assured return of Rs. 8,38,500/- and any other amount further which becomes due till the filing of the application of occupation certificate.

29. The complainant in the present complaint is seeking unpaid assured returns on monthly basis from the respondent as per the agreed terms. It is pleaded that the respondent has not complied with the terms and conditions of the MOU. Though for some time, the amount of assured returns was paid i.e., till February 2022. However, thereafter the respondent unilaterally stopped making the said payments and sought to justify the same by invoking the plea of force majeure under Clause 6 of the MOU. Clause 6 of MOU is reproduced herein for ready reference:

> *6.1. "In the event of **force majeure conditions** prevailing, then the **payment of lease rental shall remain suspended for such period, and payment shall resume upon discontinuation of such force majeure condition**. In the event such force majeure condition prevails beyond the period of 90 days, then **the developer shall in its discretion, opt to terminate this MOU and the transaction contemplated therein."***

30. It is important to note that as per clause 3.1.1 of the MOU, the respondent has promised an amount of Rs.81.66/- per sq. ft. of super area of premises per month in the form of assured return till the application for grant of occupation certificate is filed before the competent authority. Clause 3.1.1 of the MOU is reproduced herein for ready reference:

> ***3. Assured Return***
> *3.1.1. "The Developer shall pay to the Allottee a pre-possession lease rental **with effect from 03.10.2021 till Application of Occupation Certificate is filed at the rate of Rs. 81.66/-** (Rupees Eighty-One and Paisa Sixty-Six Only) **per sq. ft.** (hereinafter interchangeably referred to as the 'Pre-Possession Lease Rental'). Any GST or other indirect Taxes if levied by any Government Authorities) on this pre-possession Lease shall be borne by the Second Party."*

The said clause clearly casts a binding obligation upon the respondent to make the agreed payment for the stipulated period.

31. The Authority observes that the said plea of force majeure raised by the respondent is not sustainable in the facts and circumstances of the present case. Clause 6.1 of the MOU provides that the payment of assured return may remain suspended only in the event of subsistence of force majeure conditions and that such suspension would operate only for the duration of such conditions. Furthermore, the clause also contemplates that if the force majeure condition continues beyond a period of 90 days, the developer may, at its discretion, terminate the MOU. However, the respondent has failed to place on record any cogent material to establish the existence of any force

majeure event which prevented it from complying with its contractual obligation to pay the assured return. More importantly, there is nothing on record to show that the respondent ever intimated the complainant about the occurrence of any such alleged force majeure condition or about the suspension of assured return payments. No letter, email, notice, or any other form of communication has been produced by the respondent to demonstrate that the complainant was informed that the assured returns would be stopped or kept in abeyance on account of force majeure circumstances.

32. In the absence of any contemporaneous communication or documentary evidence indicating the existence of force majeure conditions and the consequent suspension of payments, the unilateral stoppage of assured return by the respondent is clearly contrary to the terms and conditions of the MOU. The conduct of the respondent in discontinuing the agreed payments without any prior notice or justification amounts to a breach of the contractual obligations undertaken under Clause 3.1.1 of the MOU.

33. Accordingly, the contention of the respondent that the payment of assured return stood suspended on account of force majeure circumstances cannot be accepted. The respondent remains bound by the contractual stipulation contained in the MOU to pay the assured returns to the complainant till the filing of the application for grant of Occupation Certificate before the competent authority.

34. In light of the reasons mentioned above, the Authority is of the view that as per the MoU dated 02.03.2022, it was obligation on the part of the respondent to pay the assured return. It is necessary to mention here that the respondent has failed to fulfil its obligation as agreed inter se both the parties in MoU dated 02.03.2022. Accordingly, the liability of the respondent to pay assured

return as per MoU is still continuing. Hence, the respondent/promoter is directed to pay assured return to the complainant at the agreed rate i.e., @Rs.81.66/- per sq. ft. of super area of the premises from the date it has not been paid i.e., from March 2022 till the filing of the application for grant of Occupation Certificate by the respondent before the competent authority.

G. 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. Cancellation dated 07.06.2025 is bad in eyes of law and hence set-aside and the respondent is directed to reinstate the unit of the complainant within 30 days of this order.

II. The respondent is directed to pay the amount of assured return at the agreed rate i.e., @ Rs.81.66/- per sq. ft. per month from the date the payment of assured return has not been made i.e., March 2022 till the date of filing of the application for grant of Occupation Certificate by the respondent before the competent authority in terms of the memorandum of understanding executed between the parties on 02.03.2022.

III. The respondent is directed to pay the outstanding accrued assured return amount 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.

IV. The respondent shall not charge anything from the complainant which is not part of the MOU executed between the parties on 02.03.2022 and buyer's agreement executed on 06.05.2022.

36. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein details of rate of assured return, area of the unit, amount paid by the complainant(s)-allottee and amount of assured return received by the complainant(s) is mentioned in each of the complaints.
37. The complaints as well as applications, if any, stand disposed of.
38. True certified copies of this order be placed on the case file of each matter.
39. Files be consigned to registry.

Dated: 13.01.2026

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory
Authority, Gurugram