

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

Complaint no.	:	408 of 2024
Date of complaint	:	15.02.2024
Date of order	:	20.01.2026

Priyanka Gandhi

R/o: Duplex House No.1, Phase-3, Part-2, Sector-6,
New Shimla, Shimla-171009.

Complainant

Versus

1. KS Propmart Private Limited,
Having Regd. Office at: A-22, Hill View Apartments,
Vasant Vihar, New Delhi-110057.

2. Devyansh Group
R/o 511-515, 5th floor, 114 Avenue, Sector-114,
Gurugram.

Respondents

CORAM:

Shri Arun Kumar

Shri Phool Singh Saini

Chairman

Member

APPEARANCE:

Sh. Rajesh Yadav (Advocate)

None

Complainant

Respondent no. 1& 2

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 as provided under the provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Project and unit related details

2. The particulars of the project, the amount 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	"Park Street", Sector 85, Gurugram
2.	Area of project	2.85 acres
3.	Nature of project	Commercial
4.	DTCP license no. and validity	100 of 2013 dated 02.12.2013 valid up to 01.12.2019
5.	Name of licensee	KS Propmart Pvt. Ltd.
6.	RERA registration and validity	41 of 219 dated 30.07.2019 valid up to 30.06.2022
7.	Extension of RERA registration	Extension no. 07 of 2023 dated 10.04.2023 valid up to 30.06.2023
8.	Unit and floor no.	S-23A, 2 nd floor (Retail unit) (As per page no. 46 of the complaint)
9.	Area admeasuring	347.89 sq.ft. (Tentative Super area) (As per page no. 46 of the complaint)
10.	Welcome letter	09.10.2019 (page 35 of complaint)
11.	Date of execution of memorandum of understanding	13.11.2019 (page 42 of complaint))
12.	Date of execution of agreement for sale	Not executed
13.	Total sale consideration as per MoU	Rs.24,80,456/- (page 46 of complaint)
14.	Amount paid by the complainant	Rs.23,72,612/-
15.	Assured return clause	3. Lease Rental 3.1.1.PRE-POSSESSION LEASE RENTAL: The Developer shall pay to the Allottee pre-possession lease. rental from 01/11/2019 till the application for Occupation Certificate is filed for Retail Block, at the rate of Rs. 44.74/- (Rupees Forty- Four and Paise Seventy-Four Only) per sq. it. of

		super area of premises per month (hereinafter referred to as the Pre-Possession Lease Rental') 3.1.2. POST-POSSESSION LEASE RENTAL: After possession, subject to receipt of Possession charges by the Developer, the first Lease rental to be paid by the Developer to the Allottee shall be @ Rs. 47.50/- (Rupees Forty Seven and Paise Fifty Only) per sq. ft. of super area of premises per month for a period of 2 (two years from the date of receipt of Possession charges (hereinafter referred to as the 'Post-Possession Lease Rental')..
16.	Due date of possession	13.05.2023 [Calculated as per <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i>] + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020]
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:

- I. That the complainant is the bona fide purchaser of the commercial retail block unit no. - S-23A located at second floor, admeasuring and aggregate tentative super area of 347.89 sq. ft. for total sale consideration of Rs. 24,80,456/-.
- II. That the complainant along with her family members visited the project site and marketing office of the respondent. The office bearers of developer represented the brochure, payment plans and schemes and confirmed that the project will be complete by December 2021 and offered

a corner retail unit of the project on 2nd floor. They allured for the sale of their commercial unit and promised that along with a written agreement / MOU, the developer shall pay the allottee pre-possession lease rentals at the rate of Rs. 44.74/- per sq ft of super area of premises per month till the builder applies for Occupation Certificate for Retail Block and this rental income will even continue after possession of the unit at the rate of Rs. 47.50/- per sq. ft of super area of premises per month for a period of 02 years from the date of receipt of possession charges.

- III. That the complainant applied for booking of the corner retail unit on 09.10.2019 by issuing Cheque no '000007' dated 09.10.2019 for amount Rs. 90,000/-, as booking amount and filled up an application form provided by the office occupants of the respondent.
- IV. That the respondent allotted unit no. – S-23A, admeasuring an aggregate tentative super are of 347.89 sq ft. The allottee complainant agreed to accept the unit for a total sale consideration of Rs. 24,80,456/- and made further payments to the demand of the respondent.
- V. That out of said amount of Rs. 24,80,456/- a total of Rs. 1650000/- stood paid and the remaining amount was to be paid as per schedule I annexed with the Memorandum of Understanding.
- VI. That after the overall payments of Rs 16,50,000/- on 13.11.2019, the respondent issued pre-printed arbitrary, unilateral MOU (Memorandum of Understanding) the complainant was asked to accept the MOU as the lease rental payment would start only after the acceptance of MOU. The office occupants also confirmed that a builder buyer agreement also needs to be executed once it is ready.
- VII. That as per the said MOU the respondent was to pay pre lease rental from 01.11.2019 till application of Occupation Certificate is filed for retail block at

the rate of Rs. 44.74 per square feet of super area of premises per month. The said amount worked out to Rs. 14,008/- per month after deduction of TDS. The respondent paid the said amount of Rs. 14008/- per month till March 2020. The complainant issued a notice dated 17.10.2020 to the respondent through its directors. The same was served upon it and the acknowledgement was received back.

- VIII. That despite the fact of receipt of said notice pre-possession lease rental has not been paid till date. The complaint vide the above mentioned notice had informed about the change in address of the complainant. Despite this fact neither the respondent paid the pre-possession lease rental nor has completed the project or its super structure no information in this regard has been supplied by the company nor they are taking the calls made to them in this regard.
- IX. That while the possession assurance date was nearing, the respondent asked the complainant to make further payments. the respondent pressurized the complainant to clear the full payment for the retail shop no S-23A within 30 days, otherwise there shall be interest charges @ 18% p.a. as mentioned under Article 1.5 of MOU and in the event of delay of beyond 90 days in this payment, the respondent will sell/allot S-23A retail shop at higher price to someone else, and will either cancel the unit or issue another shop to the complainant. Under the pressure of the respondent and in order to safeguard the retail shop, on 28.10.2021 the complainant made an online payment to the respondent for an amount of Rs 7,22,612/- and post this online payment the total paid amount by the complainant for the shop is nearly 95% of the total sale consideration amount. The complainant has paid Rs. 23,72,612/- against the total sale consideration of Rs. 24,80,456/-.

- X. That complainant has made more than 95% of the total sale consideration amount however the respondent is still not executing the builder buyer agreement, the respondent has been ignoring the allottee complainant's requests and queries and concerns over BBA.
- XI. That the respondent has failed to give possession in December 2021 as committed at the time of booking of the unit, and didn't oblige his promises and commitments. By all means the complainant has paid more than 95% of the total sale consideration and it's been more than 02 years of this almost full payment. Despite of receiving payment the Respondent is neither clearing the dues of pre-possession lease rentals which is totaling to Rs. 6,44,368/- till filing of this complaint i.e. January 2024, nor executing the Builder Buyer Agreement.
- XII. That very recently on 17.01.2023 the complainant along with her father visited the project site in order to see the construction stage of the project and to the shock and surprise of the complainant the project is standing with bare structure. The date assured by the office occupants of the respondent was December 2021, however it is already delayed by 02 years and no clarity on future additional time.
- XIII. That after taking nearly 95% of the total sale consideration amount, and in this event of deliberate and malicious project delay without executing BBA and without fulfilling the promised and committed rental to the complainant, lead to the only conclusion that there is a deficiency of service on the part of the respondent party and as such they are liable to be punished and compensate the complainant. The complainant is entitled for the relief as the company has failed to discharge its obligations under the memorandum of understanding entered between the respondent and complainant. The complainant has suffered mental

torture and harassment due to the acts of the respondent for no fault of the complainant. She is living alone with her daughter at her father's house in Shimla due to an ongoing family dispute with her husband.

- XIV. That for the first time cause of action for the present complaint arose in October 2019 when the complainant booked the unit and the respondent didn't give written assurance over delivery of the project, it further rose when the MOU containing unfair and unreasonable terms was, for the first time, forced upon the allottee. The cause of action arose when the respondent falsely mentioned about BBA execution in the MOU but in reality it was never executed. It further arose in April 2020 when the promised obligations mentioned under Article 3.1.1 of MOU was not fulfilled by the respondent. The cause of action arose when the legal notice sent by the complainant was not given any heed by the respondent. It further arose when the BBA was not executed even after several requests and queries raised by the complainant, and further cause of action arose December 2021 when the respondent party failed to deliver the project as promised at the time of booking of the commercial retail unit & in Dec 2023 when respondent party finally denied to execute BBA and even failed to deliver the project even after delay of more than 02 years. The cause of action is alive and continuing and will continue to subsist till such time as this Hon'ble Authority restrains the respondent party by an order of injunction and/or passes the necessary orders.
- XV. That the complainant does not want to withdraw from project. The promoter has not fulfilled his obligations therefore as per obligations on the promoter under section 18(1) provision, the promoter obligated

to pay interest at the prescribed rate for every month of delay till the handing over the possession.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - i. Direct the respondent to pay interest at the prescribed rate from the due date of possession until the physical possession of the retail unit as per section 18 of Real Estate (Regulation and Development) Act, 2016.
 - ii. Direct the respondent for the execution of builder buyer agreement and take corrective measures to stop such deliberate delays in execution of this important and mandatory document execution by imposing penalty on the respondent.
 - iii. Direct the respondent to handover the physical possession of unit (complete in all aspects as per specification mentioned in RERA Act, 2016).
 - iv. Direct the respondent to refund/ adjust the unpaid lease rentals from Mar/ Apr 2020 till respondent's application for grant of Occupation Certificate from respective authority, along with the quarterly compounded prescribed interest rate @18% per annum.
 - v. Respondent party may kindly be directed to pay an amount of Rs. 5,00,000/- for deficiency in service.
 - vi. Respondent party may kindly be directed to pay an amount of Rs. 1,50,000/- as litigation expenses.
5. 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 no. 1.

6. The respondent no.1 by way of written reply made the following submissions:
 - i. That the complainant made an application for provisional allotment of a unit bearing no S-23 A on the second floor admeasuring a tentative

super area of 347.98sq.ft in the project developed by the respondent known as **VSR 85 Avenue which is now known as Park Street** vide application form.

- ii. That one of the offers made by the respondent at that point in time was that the respondent would pay an assured return at the rate of Rs 44.74/- sq. ft of the super area from 01.11.2019 till the notice for the offer of possession issued for the retail block subject to force majeure conditions and other conditions mentioned in the MOU. That the complainant accordingly entered into an MOU dated 13.11.2019 with the respondent all the rights and the liabilities of the parties.
- iii. That as per the memorandum of understanding the price of the unit for an area admeasuring a tentative super area of 347.89sq.ft sq. ft was Rs 24,80,456/-exclusive of EDC, IDC. Interest-free maintenance security (IFMS), electricity connection charges, power backup charges, air conditioning charges tax and other such levies/cesses/VAT as may be imposed by any statutory authority.
- iv. That the complainant has made a payment of Rs 23,72,612/- including service taxes to the respondent at the time of the allotment. However, in addition to the above additional cost the complainant is also supposed to make their other payments in the nature of EDC, IDC, interest-free maintenance security, electricity collection charges, power backup charges, air conditioning charges, service tax and such other levies/cesses/VAT as per the demand raised by the respondent. Further, as per the payment plan attached as Schedule 1 to the MOU, the complainant was liable to make a payment toward EDC, and IDC as and when demanded and is also liable to pay other charges at the time of OFFER OF POSSESSION. The total amount paid by the complainant

till date stands to be Rs 23,72,612 /-. That amount of Rs 1,07,844 excluding EDC, IDC and other tax payments plus interest is still pending at the time end of the complaint.

- v. That there was no time limit provided under the MOU for handing over the possession of the unit. This 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 terms of the MOU. That the very inclusion of such a clause in the MOU goes a step further in illustrating the fact that the complainant very well knew and understood the implication of the terms of the MOU having no date of possession but having a buffer/ protection of payment of assured return till offer of possession however now it does not lie in the mouth of the complainant to allege that there has been undue delay in the heading over of the possession. The parameters of the clause contained in the MOU that was executed between the parties by fully understanding the impact of the contents of the MOU without any corrosion, or influence of undue pressure.
- vi. 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 44.74/- of the super area from 01.11.2019 till the notice of possession is issued. However, the payment assured return was subject to the force measure clause as provided under clause 6.1 of the MOU and other clauses of the MOU. It is submitted that an amount of Rs 1,08,955/- has been paid by the respondent as an assured return to the complainant.
- vii. That as per the terms of the MOU, it was also agreed that the respondent will pay pre-possession lease rental at the rate of Rs 44.74/- per square fit of the super area until the notice for the offer of

possession is issued for the retail block. It is submitted that the construction and development of the project was affected due to force majeure conditions. However, the payment of the assured return was subject to the Force major clause as provided under clause 6 of the MOU. The company faced the problem of subsoil water which persisted for a period of 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. There was a stay on construction in the furtherance to the direction passed by the Hon'ble NGT. Furtherance of the above-mentioned order passed by the Hon'ble NGT. The Government of India declared a nationwide lockdown due to the COVID-19 Pandemic effective from 24th March 2020 at midnight. The construction and development of the project were affected due to this as well. The Authority has vide its order dated 26.05.2020 Invoked the force majeure clause.

- viii. That the respondent despite facing the above force majeure conditions has admittedly received the assured return to a sum of rupees 1,08,955/- for a period of total 7 months. The payment of the assured return was stopped for the force major condition which continued or still continuing. The payment of pre-possession lease rental was stopped primarily because of covid-19 pandemic. The hardship being faced due to the prevailing COVID-19 pandemic is not a hidden fact and is squarely covered by the force measure clause of the MOU. The post-

dated cheques were duly honored by the respondent company till May 2021 and it was only because of the financial constraints arising out of the COVID-19 pandemic that the further post-dated cheque could not be honored.

7. The present complaint was filed on 15.02.2024 in the Authority. On 04.04.2024, 04.07.2024, 10.10.2024, 06.03.20225, 22.05.2025, 21.08.2025 and 20.01.2026 the counsel for the respondent no. 2 was directed to file the reply within the stipulated time period in the registry of the Authority. However, despite specific directions, the respondent no. 2 has failed to put in appearance before the Authority and further failed to file reply. Therefore, in view of order dated 20.01.2026, the defence of the respondent no. 2 was struck off on failure of the respondent to file reply despite the lapse of one year. In view of the same, the matter is proceeded ex-parte against the respondent.
8. All other averments made in the complaint were denied in toto.
9. Copies of all relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submissions made by parties.

E. Jurisdiction of the authority

10. 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

11. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the 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

12. 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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

13. 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.

F. Findings on the objections raised by the respondent.

F.I. Objection regarding force majeure conditions.

14. The respondent has raised the contention that the construction of the project has been delayed due to force majeure circumstances such as shortage of labour, demonetization and implementation of social schemes like NREGA and JNNURM etc, demonetization, delay on part of govt. authorities in granting approvals and other formalities, shortage of labour force in the NCR region, ban on the use of underground water for construction purposes, stay on construction due to orders passed by NGT, Covid 19 pandemic etc. The

authority observes that the due date of possession was 13.11.2022. Further, an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 13.05.2023. As far as other contentions of the respondent w.r.t delay in construction of the project is concerned, the same are disallowed as firstly the orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. 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 cannot be granted any leniency on based 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 execute the builder buyer agreement and take corrective measures to stop such deliberate delays in execution of this important and mandatory document execution by imposing penalty on the respondent.

15. The complainant has submitted that despite receipt of an amount of Rs.23,72,612/- from them against the sale consideration of Rs. 24,80,456/-, the respondent has failed to enter into a registered buyer's agreement against the unit allotted to them till date. Thus, seeking the relief of execution of buyer's agreement against the booked unit/space in their favour. The Authority observes that despite receipt of considerable amount against the booked unit back in 2019 from the complainant, the respondent-promoter has failed to enter into a written agreement for sale against the unit in question and has failed to get the unit registered in their name till date. Hence, it is violation of the

provisions of the Act, and shows its unlawful conduct. As per Section 13(1) of the Act, 2016, the promoter is obligated not to accept more than 10% of the cost of the apartment, plot or building as the case may be, as an advance from a person without entering into a written agreement for sale with such person and register the said agreement for sale. Thus, in view of Section 13 of the Act of 2016, the respondent-promoter is directed to enter into a registered buyer's agreement with the complainant as per the 'agreement for sale' annexed with the Haryana Real Estate (Regulation and Development) Rules, 2017 within a period of 60 days from the date of this order.

G.II Direct the respondent to refund/adjust the unpaid lease rentals from March/April 2020 till respondent's application for grant of OC from respective authority, along with the quarterly compounded prescribed interest rate @18% per annum.

G.III Direct the respondent to pay interest at the prescribed rate from the due date of possession until the physical possession of the retail unit as per Section 18 of Act, 2016.

- **Assured return**

16. The complainant in the present complaint is seeking refund/adjust the unpaid lease rentals. It is pleaded that the respondent has not complied with the terms and conditions of the MoU dated 13.11.2019. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same. 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."

17. It is important to note that as per clause 3.1.1 of the MOU, the respondent has promised an amount of Rs.44.74/- per sq. ft. of super area of premises per month in the form of assured return/pre-possession lease rental till the application for occupation certificate is filed for retail block. Clause 3.1.1 of the MOU is reproduced herein for ready reference:

3.1.1. PRE-POSSESSION LEASE RENTAL:

The Developer shall pay to the Allottee pre-possession lease rental from 01/11/2019 till the application for Occupation Certificate is filed for Retail Block, at the rate of Rs. 44.74/- (Rupees Forty- Four and Paise Seventy-Four Only) per sq. ft. of super area of premises per month (hereinafter referred to as the Pre-Possession Lease Rental')

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

18. 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 lease rentals would be stopped or kept in abeyance on account of force majeure circumstances.

19. 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.
20. 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.
21. However, the authority observes that the due date of handing over of possession was 13.05.2023 and there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation/completion certificate or what is the status of construction of the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the promoter as well as allottees.

22. In light of the reasons mentioned above, the Authority is of the view that as per the MoU dated 13.11.2019, it was obligation on the part of the respondent to pay the assured return/pre-possession lease rental. 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 13.11.2019. 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/pre-possession lease rental to the complainant at the agreed rate i.e., @Rs.44.74/- per sq. ft. of super area of the premises from the date it has not been paid i.e., from April 2020 till the due date of possession i.e., 13.05.2023.

- **Delayed possession charges**

23. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to Section 18(1) of the Act. Sec. 18(1) proviso reads as under.

Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

24. **Due date of possession:** The Hon'ble Supreme Court in the case of ***Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018*** observed that *"a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and*

circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.

25. In view of the above-mentioned reasoning, the date of execution of MoU i.e. 13.11.2019 is ought to be taken as the date for calculating due date of possession. Further, an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 13.05.2023.
26. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:
- Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]**
- (1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:
Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.
27. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 20.01.2026 is **8.80%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%**.
28. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent

is in contravention of the provisions of the Act. The construction of the project was to be completed by 13.05.2023.

29. However now, the proposition before it is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the lease rental as well as delayed possession charges?
30. To answer the above proposition, it is worthwhile to consider that the lease rental in this case is payable as per MoU dated 13.11.2019 and the respondent is liable to pay pre-possession lease rental to the complainant allottee @Rs. 44.74/- per sq.ft. on monthly basis till the application for Occupation Certificate. If we compare this assured return with delayed possession charges payable under proviso to Section 18(1) of the Act, 2016, the delayed possession charges are much better i.e., assured return in this case is payable at Rs. 15,564/- approximately per month till completion of building whereas the delayed possession charges are payable approximately Rs. 21,353.5/- per month.
31. The authority observes that the due date of handing over of possession was 13.05.2023. However, the respondent has failed to offer possession of the subject unit to the complainant till the date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Moreover, the authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation/completion certificate or what is the status of construction of the project. Hence, this project is to be treated as on-going project and

the provisions of the Act shall be applicable equally to the promoter as well as allottees.

32. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with proviso to Section 18(1) of the Act on the part of the respondent is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 13.05.2023 till valid offer of possession plus 2 months after obtaining occupation/completion certificate from the competent authority or actual handing over of possession whichever is earlier, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules.

G. IV. Direct the respondent to pay lease rent as per MoU.

33. The complainant in the present complaint is seeking additional relief w.r.t payment of lease rental as per the terms of the MoU dated 13.11.2019. The complainant has submitted that the respondent was under a legal obligation to pay lease rent of the booked by the complainant unit as mentioned in article 3 of the MoU at the time of possession. The complainant is seeking unpaid lease rental on monthly basis as per the MoU dated 13.11.2019. It is pleaded by the complainant that the respondent has not complied with the terms and conditions of the said MoU.
34. The respondent has submitted that the relief of "assured returns/lease rental" is beyond the jurisdiction of this authority. The enforcement of the memorandum of understanding entered into between the parties on the same date with regard to assured return/pre-possession leases rental before and after the offer of possession is a matter of civil nature, only to be dealt with by a civil court/consumer court as the case may be.

35. The authority observes that the MoU dated 13.11.2019 can be considered as an agreement for sale interpreting the definition of the agreement for “agreement for sale” under Section 2(c) of the Act and broadly by taking into consideration the objects of the Act. Therefore, the promoter and allottee would be bound by the obligations contained in the memorandum of understandings and the promoter shall be responsible for all obligations, responsibilities, and functions to the allottee as per the agreement for sale executed inter-se them under Section 11(4)(a) of the Act. An agreement defines the rights and liabilities of both the parties i.e., promoter and the allottee and marks the start of new contractual relationship between them. This contractual relationship gives rise to future agreements and transactions between them. The “agreement for sale” after coming into force of this Act (i.e., Act of 2016) shall be in the prescribed form as per rules but this Act of 2016 does not rewrite the “agreement” entered between promoter and allottee prior to coming into force of the Act as held by the Hon’ble Bombay High Court in case ***Neelkamal Realtors Suburban Private Limited and Anr. v/s Union of India & Ors.***, (Writ Petition No. 2737 of 2017) decided on 06.12.2017.
36. The money was taken by the promoter as 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 promoter promised certain amount by way of lease rental/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. If the project in which the advance has been received by the developer from an allottee

is an ongoing project as per Section 3(1) of the Act of 2016 then, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings. The promoter is liable to pay that amount as agreed upon. Moreover, an agreement/MoU defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottees arises out of the same relationship and is marked by the said memorandum of understanding.

37. The complainant is seeking relief w.r.t payment of lease rental in terms of Article 3 of MoU dated 13.11.2019. Article 3 of the MoU dated 13.11.2019 provides for payment of "Post-Possession Lease Rental", the same is reproduced as under for ready reference:

ARTICLE 3

3.1.2. POST-POSSESSION LEASE RENTAL:

After possession, subject to receipt of Possession charges by the Developer, the first Lease rental to be paid by the Developer to the Allottee shall be @ Rs. 47.50/- (Rupees Forty Seven and Paise Fifty Only) per sq. ft. of super area of premises per month for a period of 2 (two years from the date of receipt of Possession charges (hereinafter referred to as the 'Post-Possession Lease Rental')."

38. After considering the above, the authority observes that vide clause 3.1.2 of the MoU dated 13.11.2019, it was agreed by the Developer that it shall pay to the Allottee post-possession lease rental for a period of 2 years from the date of receipt of Possession charges. Therefore, the developer shall pay Rs. 47.50/- sq. ft. to the allottee for a period of 2 years from the date of receipt of possession charges.

G.V Direct the respondent to handover the physical possession of unit (complete in all aspects as per specification mentioned in RERA Act, 2016)

39. There is no clause in the MoU that provides for the handing over of physical possession of the unit to the complainant. Hence, no direction regarding the handing over of possession can be given to the complainant.

G.V Litigation charges & Compensation

40. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation and litigation charges under Sections 12,14,18 and Section 19 which is to be decided by the Adjudicating officer as per Section 71 and the quantum of compensation and litigation expense shall be adjudged by the Adjudicating Officer having due regard to the factors mentioned in Section 72. The Adjudicating Officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the Authority

41. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent/promoter is directed to enter into a registered buyer's agreement with the complainant as per the 'agreement for sale' annexed with the Haryana Real Estate (Regulation and Development) Rules, 2017 within a period of 60 days from the date of this order.

- ii. The respondent/promoter is directed to pay assured return/pre-possession lease rental to the complainant at the agreed rate i.e., @Rs.44.74/- per sq. ft. of super area of the premises from the date it has not been paid i.e., from April 2020 till the due date of possession i.e., 13.05.2023.
- iii. The respondent is directed to pay interest for every month of delay from due date of possession i.e., 13.05.2023 till valid offer of possession plus 2 months after obtaining occupation/completion certificate from the competent authority or actual handing over of possession whichever is earlier, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules.
- iv. The respondent is directed to pay post possession lease rental Rs. 47.50/- sq. ft. to the allottee for a period of 2 years from the date of receipt of possession charges.
- v. The arrears of such interest accrued from the due date of possession i.e., 13.05.2023 till the date of order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per Rule 16(2) of the Rules.
- vi. The respondent/promoter is directed to supply a copy of the updated statement of account after adjusting assured return/pre-possession lease rental & delay possession charges within a period of 30 days to the complainant.
- vii. The complainant is directed to pay outstanding dues, if any, after adjustment of assured return/pre-possession lease rental & delay

possession charges within a period of 60 days from the date of receipt of updated statement of account.

- viii. The respondent/promoter is directed to handover possession of the unit to the complainant in terms of the MoU dated 13.11.2019 and execute conveyance deed in their favour as per Section 17(1) of the Act of 2016.
- ix. The respondent shall not charge anything from the complainant which is not the part of the MoU dated 13.11.2019.
- x. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delay possession charges as per Section 2(za) of the Act.
42. The complaint stands disposed of.
43. File be consigned to registry.


Phool Singh Saini
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:20.01.2026


Arun Kumar
Chairman