

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

Date of order: 14.08.2026

NAME OF THE BUILDER		M/S K S PROMART PRIVATE LIMITED	
PROJECT NAME		"PARK STREET" at Sector 85, Village Badha, Tehsil-Manesar, Gurugram, Haryana.	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/5834/2025	Sudip Kumar Lahiri and Taralika Lahiri V/S M/s K S Promoter Private Limited	Shri Kailash Prashad Pandey, Advocate for complainants and Shri Jagdeep Yadav, Advocate for respondent
2.	CR/5835/2025	Sudip Kumar Lahiri and Taralika Lahiri V/S M/s K S Promoter Private Limited	

CORAM:

Shri Arun Kumar	Chairman
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ORDER

1. This order shall dispose of both the complaints titled as above filed before the Authority 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 project, namely, "**PARK STREET**" being developed by the same respondent/promoter i.e., M/s K S Propmart Private Limited. The terms and conditions of the builder buyer agreement and allotment letter against the allotment of unit in the said project of the respondent/builder and fulcrum of the issues involved in these cases pertains to failure on the part of the promoter to complete the construction of the project, seeking delay possession along with interest at the prescribed rate, delay possession charges and the execution of the conveyance deeds.
3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"PARK STREET" at Sector 85, Village Badha, Tehsil-Manesar, Gurugram, Haryana
Project Area	2.85 Acres
Nature of the project	Commercial Complex
DTCP License No.	100 of 2013 dated 02.12.2013 Valid up to 01.12.2019
Name of Licensee	M/s K S Propmart Private Limited
RERA Registered	Registered 41 of 2019 dated 30.07.2019 Valid up to 31.12.2021
RERA Extension	Extension No. 7 of 2023 dated 10.04.2023 Extension granted up to 30.06.2023
Possession clause: -	Not available
Due date of possession	20.08.2023 [20.02.2023+ 6 months on account of Covid-19] In absence of possession clause, the Authority calculate the due date of possession in view of " Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018-SC); MANU/SC/0253/2018 Hon'ble Apex Court 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

		<p><i>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." In view of the above-mentioned reasoning, the date of the execution of MoU dated 20.02.2020 ought to be taken as the date for calculating the due date of possession. Therefore, the due date for handing over the possession of the unit comes out to be 20.02.2023 (Plus) Grace period of 6 months allowed as per HARERA notification no. 9/3-2020 dated 26.05.2020.]</i></p>		
<p>Clause w.r.t pre-possession lease rental & post-possession lease rental, as per MoU</p>		<p>3. Lease Rental 3.1.1 Pre possession lease rental The developer shall pay to the allottee pre-possession lease rental from 13.02.2020 till the application for occupation certificate is filed for retail block, at the rate of Rs.46/- per sq. ft. 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.61.33/- per sq. ft. of super area of premises per month (hereinafter referred to as the 'Post-possession Lease Rental'). 3.4 The developer shall continue to pay to the allottee lease rental from and as mentioned in 3.1 above till the application for occupation certificate is filed for retail block. ...</p>		
<p>Clause w.r.t revision in super area, as per MoU</p>		<p>[Emphasis supplied] 1.3 It is hereby clarified to the allottee that super area of unit as mentioned herein above is subject to modifications, final confirmation of same shall be made once the building plan is revised/ the structure is complete/ at the time of offer of possession of unit.</p>		
<p>Occupation certificate: -</p>		<p>Not yet obtained</p>		
<p>Offer of possession: -</p>		<p>Not offered</p>		
Sr. No.	Complaint no. / Title/ Date of Filing / Reply	Unit no. and area	Date of AL MoU and due date of Possession	BSC, TSC and Amount paid
1.	CR/5834/2025 Sudip Kumar Lahiri and Taralika Lahiri V/S M/s K S Promoter Private Limited DOF	H-269 at Lower Ground Floor (Retail Block) 266.30 sq. ft. (tentative super area) [As mentioned in clause 1.1 of	Welcome Letter: 22.01.2020 [page 20 of complaint] Allotment letter: 20.02.2020	BSC: - Rs.24,49,960/- [As mentioned in clause 1.1 of MOU at page no. 27 of complaint] TSC: - Rs.25,91,099/- (BSP + EDC/IDC)

	05.12.2025 Reply Not Filed Defence Struck off	MoU at page 27 of the complaint]	[page 21-22 of complaint] Memorandum of understanding (MoU): 20.02.2020 [page 23-37 of complaint]	[As mentioned in allotment letter at page no. 21 of complaint] AP: - Rs.12,98,500/- [As mentioned in clause 1.4 of MoU at page 28 - 29 of complaint]
Due date of possession: 20.08.2023 [20.02.2023+ 6 months on account of Covid-19] [Note: Calculated 3 years from the date of execution of Memorandum of understanding in view of <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018-SC); MANU/SC/0253/2018 (Plus)</i> Grace period of 6 months allowed as per HARERA notification no. 9/3-2020 dated 26.05.2020.]				
2.	CR/5835/2025 Sudip Kumar Lahiri and Taralika Lahiri V/S M/s K S Promoter Private Limited DOF 05.12.2025 Reply Not Filed Defence Struck off	H-268 at Lower Ground Floor (Retail Block) 266.30 sq. ft. (tentative super area) [As mentioned in clause 1.1 of MoU at page 27 of the complaint]	Welcome Letter: 22.01.2020 [page 20 of complaint] Allotment letter: 20.02.2020 [page 21-22 of complaint] Memorandum of understanding (MoU): 20.02.2020 [page 23-37 of complaint]	BSC: - Rs.24,49,960/- [As mentioned in clause 1.1 of MOU at page no. 27 of complaint] TSC: - Rs.25,91,099/- (BSP + EDC/IDC) [As mentioned in allotment letter at page no. 21 of complaint] AP: - Rs.12,98,500/- [As mentioned in clause 1.4 of MoU at page 28 - 29 of complaint]
Due date of possession: 20.08.2023 [20.02.2023+ 6 months on account of Covid-19] [Note: Calculated 3 years from the date of execution of Memorandum of understanding in view of <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018-SC); MANU/SC/0253/2018 (Plus)</i> Grace period of 6 months allowed as per HARERA notification no. 9/3-2020 dated 26.05.2020.]				
The complainants in the above complaint(s) have sought the following reliefs: 1. Direct the respondent to pay pre-possession lease rental as agreed to in para 3 sub-para 3.1.1 of the memorandum of understanding, in interest of justice;				

2. Direct the respondent to handover possession of booked shop in the project namely 'Park Street' located at Sector-85, Gurugram to the complainants at earliest, in the interest of justice;
3. Direct the promoter not to charges anything going beyond the memorandum of understanding and payment plan;
4. Award cost of litigation in favor of the complainants and against the respondent;
5. Pass such other or further order or orders as this Hon'ble Authority may deem fit and proper in the facts and circumstances of the present case.

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

Abbreviation	Full form
DOF	Date of filing complaint
AL	Allotment letter
AFS	Agreement for sale
TSC	Total Sale consideration
AP	Amount paid by the allottee(s)

4. The aforesaid complaints were filed against the promoter on account of violation of the apartment buyer's agreement and allotment letter against the allotment of units in the project of the respondent/builder and for not handing over the possession by the due date, seeking award of possession along with delayed possession charges.
5. It has been decided to treat the aforesaid 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 allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/5834/2025 titled as Sudip Kumar Lahiri and Taralika Lahiri Vs. M/s K S Propmart Private Limited** are being taken into consideration for determining the rights of the allottee(s) qua the reliefs sought by the complainants-allottees.

A. Unit and Project related details:

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

**CR/5834/2025 titled as Sudip Kumar Lahiri and Taralika Lahiri
Vs. M/s K S Propmart Private Limited**

S. N.	Particulars	Details
1.	Name and location of the project	"Park Street" at Sector 85, Village Badha, Tehsil-Manesar, Gurgaon, Haryana
2.	Nature of the project	Commercial complex
3.	Project area	2.85 acres
4.	DTCP license no.	100 of 2013 dated 02.12.2013 Valid up to 01.12.2019
5.	Name of licensee	M/s K S Propmart Private Limited
6.	RERA Registered & validity status	Registered 41 of 2019 dated 30.07.2019 Valid up to 31.12.2021
7.	RERA Extension	Extension No. 7 of 2023 dated 10.04.2023 Extension granted up to 30.06.2023
8.	Unit no.	H-269 at Lower Ground Floor (Retail Block) (As per clause 1.1 of MoU at page no. 27 of complaint)
9.	Unit area admeasuring	266.30 sq. ft. (Tentative Super Area) (As per clause 1.1 of MoU at page no. 27 of complaint)
10.	Welcome letter	22.01.2020 (As per page no. 20 of complaint)
11.	Allotment Letter	20.02.2020 (As per page no. 21 - 22 of complaint)
12.	Memorandum of understanding (MoU)	20.02.2020 (As per page no. 23 - 37 of complaint)
13.	Lease Rental	3. Lease Rental 3.1.1 Pre possession lease rental The developer shall pay to the allottee pre-possession lease rental from 13.02.2020 till the application for occupation certificate is filed for retail

		<p>block, at the rate of Rs.46/- per sq. ft. of super area of premises per month (hereinafter referred to as the 'Pre-possession Lease Rental').</p> <p>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.61.33/- per sq. ft. of super area of premises per month (hereinafter referred to as the 'Post-possession Lease Rental').</p> <p>3.4 The developer shall continue to pay to the allottee lease rental from and as mentioned in 3.1 above till the application for occupation certificate is filed for retail block. ...</p> <p style="text-align: right;">[Emphasis supplied]</p> <p>(As per page no. 31 of complaint)</p>
14.	Possession clause	Not available
15.	Due date of possession	<p>20.08.2023</p> <p>[20.02.2023 + 6 months on account of Covid-19]</p> <p>"Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018-SC); MANU/SC/0253/2018 Hon'ble Apex Court 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."</p>

		<i>In view of the above-mentioned reasoning, the date of the execution of MoU dated 20.02.2020 ought to be taken as the date for calculating the due date of possession. Therefore, the due date for handing over the possession of the unit comes out to be 20.02.2023 + Grace period of 6 months allowed as per HARERA notification no. 9/3-2020 dated 26.05.2020.</i>
16.	Clause w.r.t revision is super area	1.3 It is hereby clarified to the allottee that super area of unit as mentioned herein above is subject to modifications, final confirmation of same shall be made once the building plan is revised/ the structure is complete/ at the time of offer of possession of unit. (As per page no. 28 of complaint)
17.	Basic sale consideration	Rs. 24,49,960/- (As mentioned in clause 1.1 of MOU at page no. 27 of complaint)
18.	Total sale consideration [BSP + EDC/IDC]	Rs. 25,91,099/- (As mentioned in allotment letter at page no. 21 of complaint)
19.	Amount paid against the allotted unit	Rs. 12,98,500/- (As mentioned in clause 1.4 of MoU at page 28 - 29 of complaint)
20.	Occupation certificate	Not yet obtained
21.	Offer of possession	Not offered

B. Facts of the complaint: -

8. The complainants have made the following submissions: -
 - a. The respondent is a developer who is developing the project in the name and style of 'Park Street' located at Sector - 85, Gurugram.
 - b. The complainants have booked a Shop No. H-269 in the aforesaid project admeasuring 266.30 sq. ft. in the aforementioned project. After receipt of earnest money, the respondent herein has issued welcome letter in favour of complainant on 22.01.2020. Subsequently, allotment letter was issued by

- the promoter in favour of the complainant on 20.02.2020 along with details of the booked unit and its cost.
- c. That thereafter, memorandum of understanding was executed and signed between the complainants and the respondent stipulating the terms and conditions of sale on 20.02.2020. It is necessary to submit before this Authority that all the terms and conditions of the memorandum of understanding have been prepared and designed by the respondent as per its convenience with no option to the complainants to make any change / alteration in the terms of sale. The complainants have signed the Memorandum of Understanding in good faith believing on the assurance and promise made by the respondent herein.
- d. The total cost of the space was Rs.24,49,960/- and the same is duly mentioned in para 1 of the Memorandum of Understanding executed and signed between the complainants and the respondent herein. In para 3 of the Memorandum of Understanding, it is agreed between the complainants and the respondent that the respondent shall pay pre-possession lease rental to the complainants from 13.02.2020 @ Rs.46 /- per sq. ft. per month till the application for obtaining occupancy certificate filed. This lease rental shall be subject to the Tax Deduction at source.
- e. The complainants had paid an amount of Rs.14,55,617/- to the respondent towards the aforementioned sale consideration. The entire payments have been made as per demand raised by the respondent herein.
- f. That it is agreed by the respondent that the office space shall be developed and handed over to the complainants within 3 years and if the complainants wish, in that case the respondent shall let it out on behalf of the complainants.

- g. That the respondent had not paid pre-possession lease rental. It is agreed that the respondent shall pay pre-possession lease rental @ Rs.46 per sq. fit per month i.e. Rs.12,249/- per month from 13.02.2020 till application of occupancy certificate. The promoter has paid pre-possession lease rental till April, 2023 and thereafter, the respondent stopped making payment of pre-possession lease rental. The pre-possession lease rental is unpaid to the complainants from May 2023 till date which is about 30 months till October, 2025. As such, the complainants are entitled to get an amount of Rs.3,67,470/- from the respondent towards pre-possession lease rent till October, 2025 and the complainants are also entitled for the pre-possession lease rental from November, 2025 till obtaining occupancy certificate as agreed between the complainants and the respondent as per MOU dated 20.02.2020.
- h. That the respondent has not developed the project till date. Therefore, in the interest of justice, it is expedient to pass suitable direction against the respondent, directing them to hand over possession of the booked shop immediately without any further delay.
- i. That the respondent neither paying pre-possession lease rental and also not handing over possession of the booked shop. The respondent also not providing any development details to the complainants. Despite best efforts made by the complainants, the respondent is not responding at all. The complainants are completely in dark as the development work at site are almost stopped and there is no update about the development by the respondent herein.
- j. In these compelling circumstances, the complainants have left with no other option except to file the present complaint before this Hon'ble Authority

praying for possession and for payment of agreed pre-possession lease rental.

C. Relief sought by the complainant(s):

9. The complainants have sought the following relief:
 - i. Direct the respondent to pay pre-possession lease rental as agreed to in para 3 sub-para 3.1.1 of the memorandum of understanding, in interest of justice;
 - ii. Direct the respondent to handover possession of booked shop bearing no. H-269 admeasuring 266.30 sq. ft. in the project namely 'Park Street' located at Sector-85, Gurugram to the complainants at earliest, in the interest of justice;
 - iii. Direct the promoter not to charges anything going beyond the memorandum of understanding and payment plan;
 - iv. Award cost of litigation in favor of the complainants and against the respondent;
 - v. Pass such other or further order or orders as this Hon'ble Authority may deem fit and proper in the facts and circumstances of the present case.
10. On the date of hearing, the Authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the Act to plead guilty or not to plead guilty.
11. The respondent/promoter put in appearance through its counsel and marked attendance on 06.03.2026 and 17.04.2026. Despite giving specific directions on 16.01.2026, 06.03.2026, 17.04.2026 and 29.05.2026 to file reply, the respondent has failed to comply with the orders of the Authority. It shows that the respondent is intentionally avoiding filing of the written reply. Therefore, vide proceeding dated 14.08.2026, the defence of the respondent was ordered to be struck off for not filing reply.
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 these undisputed documents and submissions made by the complainants.

D. Jurisdiction of the Authority:

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

D.I Territorial jurisdiction

14. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

D. II Subject matter jurisdiction

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

"Section 11(4)(a)

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

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

16. So, in view of the provisions of the Act of 2016 quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
- E. Findings regarding relief(s) sought by the complainant:**
- E.I. Direct the respondent to pay pre-possession lease rental as agreed to in para 3 sub-para 3.1.1 of the memorandum of understanding, in interest of justice;**
 - E.II Direct the respondent to handover possession of booked shop bearing no. H-269 admeasuring 266.30 sq. ft. in the project namely 'Park Street' located at Sector-85, Gurugram to the complainants at earliest, in the interest of justice;**
 - E.III. Direct the promoter not to charges anything going beyond the memorandum of understanding and payment plan;**
 - E.IV Pass such other or further order or orders as this Hon'ble Authority may deem fit and proper in the facts and circumstances of the present case.**
17. The above-mentioned relief sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
18. In the instant case, vide MoU and allotment letter dated 20.02.2020, the complainant was allotted a unit bearing no. H-269, Lower Ground Floor, measuring 266.30 square feet (tentative super area) in the project of the respondent named 'Park Street' at Sector 85, Gurugram, for a sale consideration of Rs.25,91,099/- (Inclusive of basic sale price & EDC/IDC) against which the complainants have paid an amount of Rs.12,98,500/-.
19. The complainants are seeking relief with respect to payment of pre-possession lease rental as per MoU dated 20.02.2020. It is observed that vide Clause 3.1.1 of the memorandum of understanding dated 20.02.2020, the respondent has promised to pay pre-possession lease rental/assured return from 13.02.2020 till the application of Occupation Certificate is filed for retail block, at the rate of Rs.46/- per sq. ft. of super area of the premises per month.

20. At this stage, it is important to stress upon the definition of term allottee under the Act, 2016. The definition of "allottee" as per Section 2(d) of the Act of 2016 provides that an allottee includes a person to whom a plot, apartment or building has been allotted, sold or otherwise transferred by the promoter. Section 2(d) of the Act of 2016 has been reproduced for ready reference:
- 2(d)
"allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"
21. Keeping in view the above-mentioned facts and the definition of allottee as per Act of 2016, it can be said that the complainants are allottees.
22. The complainants are seeking unpaid assured returns on monthly basis as per the MOU dated 20.02.2020 at the rates mentioned therein. It is pleaded by the complainant that the respondent has not complied with the terms and conditions of the said MoU. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same.
23. The MoU dated 20.02.2020 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.

24. It is pleaded on behalf of respondent/builder that after the Banning of Unregulated Deposit Schemes Act of 2019 came into force, there is bar for payment of assured returns to an allottee. But the plea advanced in this regard is devoid of merit. Section 2(4) of the above-mentioned Act defines the word 'deposit' as *an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include:*

- (i) *an amount received in the course of, or for the purpose of business and bearing a genuine connection to such business including*
- (ii) *advance received in connection with consideration of an immovable property, under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement.*

25. A perusal of the above-mentioned definition of the term 'deposit', shows that it has been given the same meaning as assigned to it under the Companies Act, 2013 and the same provides under Section 2(31) includes any receipt by way of deposit or loan or in any other form by a company but does not include such categories of, amount as may be prescribed in consultation with the Reserve Bank of India. Similarly Rule 2(c) of the Companies (Acceptance of Deposits) Rules, 2014 defines the meaning of deposit which includes any receipt of money by way of deposit or loan or in any other form by a company but does not include:

- (i) *as an advance, accounted for in any manner whatsoever, received in connection with consideration for on immovable property*
- (ii) *as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;*

26. So, keeping in view the above-mentioned provisions of the Act of 2019 and the Companies Act 2013, it is to be seen as to whether an allottee(s) is entitled to assured returns in a case where they have deposited substantial amount of

- sale consideration against the allotment of a unit with the builder at the time of booking or immediately thereafter and as agreed upon between them.
27. The Government of India enacted the Banning of Unregulated Deposit Schemes Act, 2019 to provide for a comprehensive mechanism to ban the unregulated deposit schemes, other than deposits taken in the ordinary course of business and to protect the interest of depositors and for matters connected therewith or incidental thereto as defined in Section 2 (4) of the BUDS Act 2019.
28. The money was taken by the builder as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of her grievances by way of filing a complaint.
29. The Authority under this Act has been regulating the advances received under the project and its various other aspects. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the latter from the former against the immovable property to be transferred to the allottee later on. 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 allottee arises

out of the same relationship and is marked by the said memorandum of understanding.

30. In the present complaint, the assured return was payable as per clause 3 of MoU dated 20.02.2020, which is reproduced below for the ready reference:

3. Assured Return

3.1.1 "The developer shall pay to the Allottee pre-possession lease rental from 13.02.2020 till the application of Occupation Certificate is filed for Retail Block, at the rate of Rs.46/- per sq. ft. of super area of the premises per month."

31. Thus, the pre-possession lease rental/ assured return was payable @Rs.46/- per sq. ft. of super area of the premises per month w.e.f. 13.02.2020, till the date of filing of application for grant of occupation certificate for the retail block to the competent authority.
32. In light of the reasons mentioned above, the authority is of the view that as per the MoU dated 20.02.2020, 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 20.02.2020. Accordingly, the liability of the respondent to pay assured return as per MoU is still continuing. Hence, the respondent/promoter is directed to pay pre-possession lease rental/assured return to the complainant at the agreed rate i.e., @Rs.46/- per sq. ft. of super area of the premises from the date i.e., 13.02.2020 till the date of filing of application for grant of occupation certificate for the retail block to the competent authority as per the memorandum of understanding after deducting the amount already paid on account of assured returns to the complainants.
- **Conveyance Deed**
33. The Authority further observes and deems fit that as per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainants. The respondent/promoter has not obtained the occupation certificate till date. It is to be further

noted that Section 11(4)(f) provides for the obligation of respondent-promoter to execute a registered conveyance deed of the subject unit along with the undivided proportionate share in common areas to the association of the allottees or competent authority as the case may be as provided under Section 17 of the Act of 2016 and shall get the conveyance deed executed after obtaining the OC from the competent authority.

34. As far as the relief of transfer of title is concerned, the same can be clearly said to be the statutory right of the allottee as Section 17 (1) of the Act provides for transfer of title and the same is reproduced below for ready reference:

"Section 17: Transfer of title.

17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment or building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

35. In view of the above, the respondent is directed to execute the registered conveyance deed in favour of the complainants in terms of Section 17(1) of the Act of 2016, after receipt of occupation certificate from the competent authority and upon payment of requisite stamp duty charges and administrative charges up to Rs.15,000/- as fixed by the local administration, if any.

E.V Award cost of litigation in favor of the complainants and against the respondent;

36. The complainants are seeking above mentioned relief w.r.t compensation and litigation costs. The Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as ***M/s Newtech Promoters and Developers Pvt. Ltd. Vs.***

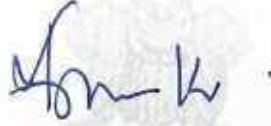
State of UP & Ors. (supra) has held that the adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and litigation cost.

F. Directions of the Authority:

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

- a. The respondent is directed to pay pre-possession lease rental/ assured returns to the complainants at the agreed rate i.e., @Rs.46/- per sq. ft. of super area of the premises from the date i.e., 13.02.2020 till the date of filing of application for grant of occupation certificate for the retail block to the competent authority as per the memorandum of understanding dated 20.02.2020 after deducting the amount already paid on account of pre-possession lease rental/ assured returns to the complainant.
- b. The respondent is directed to pay arrears of accrued assured return as per MoU dated 20.02.2020 till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @8.80% p.a. till the date of actual realization.
- c. The respondent shall handover possession of the unit to the complainants in terms of the memorandum of understanding dated 20.02.2020.
- d. The respondent is further directed to execute the registered conveyance deed in terms of Section 17 (1) of the Act of 2016 within a period of 90 days after payment of requisite stamp duty and administrative charges by the complainants.

- e. The respondent shall not charge anything from the complainants which is not the part of the memorandum of understanding dated 20.02.2020.
38. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
39. Complaint as well as application, if any, stands disposed of accordingly.
40. True certified copy of this order shall be placed in the case file of each matter.
41. File be consigned to registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.08.2026

HARERA
GURUGRAM