

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

Complaint no. : 1173 of 2025
Date of complaint : 05.03.2025
Date of order : 29.09.2026

Nisha Sahrawat and Shakuntla Devi,
Both R/o: - AB 1404, Sector 84, Sikanderpur Badha
(109), Gurugram-122002.

Complainants**Versus**

M/s KS Propmart Private Limited.
Regd. office at: T-24 & 25, 3rd Floor, D Block, Baani
Square, Sector- 50, Gurugram.

Respondent

CORAM:
Arun Kumar

Chairman

APPEARANCE:
B.S Arora (Advocate)
Jagdeep Yadav (Advocate)

Complainants
Respondent

ORDER

1. This complaint has been filed by the complainant/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.
- A. **Unit and project related details**
2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Details
1.	Name and location of the project	"Park Street" formerly known as "85 Avenue" Sector -85, Gurugram
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- 31.12.2021
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	12.09.2019 (page no. 18 of complaint)
7.	Unit No.	G-56, Ground Floor (page no. 43 of complaint)
8.	Unit admeasuring area	256.295 sq. ft. (carpet area) (page no. 43 of complaint)
9.	MoU dated	04.10.2019 (page 20 of complaint) Super area- 403.56 sq.ft. (page 24 of complaint)
10.	Agreement for sale	25.05.2022 (page 40 of complaint) Super area- 512.59 sq.ft. (page 45 of complaint)
11.	MoU dated	28.05.2022 (page 78 of complaint)
12.	Possession clause as per agreement	7.1 Schedule for possession of the said unit for commercial use- The promoter agrees and understands that timely delivery of possession of the unit for commercial usage along with parking (if applicable) to the allottee(s) and the common areas to the association of allottees or the competent authority within a period of 24 months with additional grace period of 06 months from the date of execution of this agreement....



13.	Due date of possession	25.11.2024 (Calculated as per possession clause including grace period of 6 months)
14.	Assured return clause as per MoU dated 04.10.2019	ARTICLE 3 3.1.PRE-POSSESSION LEASE RENTAL: "The developer shall pay to the Allottee pre-possession lease rental from 28.08.2019 till the application of Occupation Certificate is filed for Retail Block, at the rate of Rs.77.61/- per sq.ft. of super area of the premises per month." (as per page 27 of complaint)
15.	Assured return clause as per MoU dated 28.05.2022	ARTICLE 3 3.1.PRE-POSSESSION LEASE RENTAL: "No pre-possession lease rental is payable to the allottee for the period of 12 months starting from the date 01.06.2022 till 31.05.2023. If the filing of application for occupation certificate is delayed beyond 12 months from the date 01.06.2022 for any reason other than force majeure as defined herein, then the developer/third party would pay Pre possession lease rental per month to be calculated after taking into account received consideration to the allottee on pro-rata basis from 13 th month till the application of Occupation Certificate is filed for Retail Block of the building." (as per page 84 of complaint)
16.	Basic sale price	Rs.70,89,120/- (page no. 45 of complaint)
17.	Amount paid by complainants	Rs.35,58,287/- (as per page 104 of reply)
18.	Intimation regarding change in super area dated 09.02.2024	403.56 sq.ft. to 769.30 sq.ft. (page 103 of reply)
19.	Occupation certificate	Not obtained
20.	Offer of possession	Not offered
21.	Cancellation	22.04.2024, 05.01.2025 (page 105-106 of reply)

22.	Assured return received by the complainant	Rs.2,32,471/- (Page 8 of reply)
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B. Facts of the complaint:

3. The complainants have made the following submissions: -
- I. That in 2019, respondent through their marketing agents offered for sale of space/premises unit to the complainants in their commercial project 'Park Street' situated at sector 85 Gurugram. The respondent through their marketing agents lured and induced the complainants by their false claim that the respondent had all required approval/license from the competent authority and assured the timely possession of the project. The complainant, being induced by the assurances and representations made by the respondent, booked a 'Retail block shop' unit bearing number G56 at ground floor of the said project having super area of 403.56 sq.ft. for the total agreed consideration of Rs.61,06,367/- @ Rs. 15,131,25 per sq.ft.
 - II. That at the time of booking of above said unit, the respondent informed and assured the complainants that the possession of the said unit will be handed over timely and stated "That the company shall make all efforts to apply for the occupation certificate in respect of the project not later than 42 months from the date of receipt of all approvals such as building plans., power and water availability, fire clearance, service estimate approvals, environment and pollution clearance or signing of the buyers agreement whichever is later, subject to certain limitations as provided in the buyers agreement and the timely compliance of the provisions of the buyers agreements by the allottee".
 - III. That at the time of booking of the said unit, the complainants paid an advance amount of Rs.33,20,134/- to the respondent to get the booking confirmed for the space carpet areas of 256.295 sq.ft. and super area of

403.56 sq.ft. for the total sale consideration of Rs.63,20,254/-, inclusive of EDC/IDC charges @Rs.530/- on dated 7.8.2019, but the respondents further dated 01.03.2021 demanding an amount of Rs.2,381,53/- towards EDC/IDC @590 and the complainant was forced to pay this amount (Already Inclusive) vide receipt date 25.04.2021 of respondent.

- IV. That the respondent had also executed an MOU with the complainants on 4th of October 2019 wherein respondents has acknowledge and receipt of the payment (to the extent of 50% total consideration) and further agreed to demand/receive the balance payment of 50% as per schedule 1 of the payment plan i.e. at the time of offer of possession of retail block.
- V. That, it is pertinent to mention that as per MOU dated 04.10.2019, the respondent vide its clause 3.1 had assured the pre possession lease rental @77.61/- per sq.ft. since 28.08.2019.
- VI. That despite of receiving a hefty amount from the complainants than allowed before the execution of Agreement to sell/BBA, the respondent deliberately avoided the execution of the agreement to sell/BBA and despite of chasing the respondent's official multiple times, the respondent did not bother to execute agreement to sell and further failed to make the payment toward assured return rather claimed illegal demands as above mentioned. However, vide their correspondence dated nil and dated 04.07.2023 they assured return amount will be credited in the account of complainants.
- VII. That finally on dated 25.5.2022, the respondent company through Mr. Chetan Swara executed the agreement to sell with the complainants, but with fresh and amended terms and conditions and without the consent and knowledge of the complainant and violating the terms and conditions of previous MOU and other relevant clauses and it is evident from the above that after receiving and the hefty amount from the

complainants, the respondents at their own alter the basic clauses of the MOU dated 4.10.2019 and further did not bothered to mention w.r.t. timely possession, payment of assured return, interest there upon, or to apply of completion certificate or occupancy certificate etc.

- VIII. That the agreement to sell dated 25.05.2022 is executed on much later date being the stamp paper which is integral part of agreement to sell is got issued on 30.05.2022 and similarly another Stamp paper dated 30.05.2022 is integral part of another MOU executed between the party on dated 28.05.2022.
- IX. That soon after the execution of the agreement to sell and above said MOU the respondent refused to pay the assured return (even earlier it was not paid but they committed to pay the same) to the complainant and instead claimed the demand of balance amount towards 50% of the balance payment on the booking site along with payment towards increased super area (carpet area being same as 256.295) and fraudulently and falsely claimed that the fresh terms and condition of ATS and MOU, have super seeded and override the terms and condition of previous MOU. It is pertinent to mention that the respondent has their malafide intention of cheating has executed the present agreement to sell and MOU and got signed from the complainant for their illegal gain and harmful loses to the complainant. The respondent claimed that no assured return is payable as per Clause 3.1 of Fresh MOU dated 28.5.2022. It is further submitted that the respondents vide their communication dated 4.7.2023 intimated that the retail unit G 56 booked by the complainants is of carpet area 256.29 Sq.ft and super area 512.59 Sq.ft. It is shocking that the alleged area increased is the area of super area (only) and which is more than permissible area of 10% of boked area of the complainant and is the violation of the rule and

regulation, act of this authority as well as violation sanctioned approval plan.

- X. That the respondent raised demand from the complainant on the increased area, upon which the complainant asked the concerned official of the respondent to not increase the area as it was illegal, arbitral and against the duly executed agreement between the parties as well as against the rules and laws of RERA and to objections of the complainants the respondents once again assured that assured return shall be pay able once complainant give their consent to that and hence obtained the consent by false assurances.
- XI. That since the booking the respondent failed to deposit the assured return in the account of complainant, the complainants were constraint to lodged the complaint with police authority vide their complaint dated 16.5.2022 and the above complaint was settled by execution of the above ATS and MOU. However, respondent failed to deposit assured return rather manipulated the clause of MOU dated 28.5.2022 and hence the complainant was constraint to visit the office of the respondents on numerous occasion and she came to know that the above units block G56 has been allotted in the name of other persons also and further came to know that the retail block G56 having super area 460.05 sq.ft with basic rate per sq.ft of Rs.10630/- has been allotted in the name of Mrs Shadra Singh and Ms Shivikakalsotia.
- XII. That the complainant further came to know about mischievous act of the respondents that they have even changed the approved site plan by allocating the location of their plot bearing G56 at different location on different map. The complainants were continuously calling the respondent for their various defaults, their illegalities but they did not paid any heed how ever had the final meeting in December 2024 on last time at the office of respondents with Devinder Pandey authorised

representative of the respondent and complainants have requested him to settle the issue but the respondent paid no heed to resolve the issue rather threatened the complainants for dire consequences and to cancel the allotment and not to refund a single penny of hard earned money and further finally on 5.1.2025 issued a letter for cancellation of provisional allotment and posted at the previous address of the respondent at Sonipat. It is pertinent to mention that the allegation of cancellation is bogus and false as the respondent had neither issue any letter dated 22.4.2024 nor letter dated 23.12.2024, and the same were not received by complainants by any mode further the respondent had illegally demanded an amount of Rs. 81,92,523/- towards the balance amount. The calculation of illegal demand is beyond the imagination of the complainant and is neither justified and hence the complainant immediately on 6.1.2025 replied to the notice of cancellation and delivered the same at register email of the respondent on 06.01.2025 and further got received by hand at the office of the respondent on 07.01.2025.

- XIII. That the respondent has mischievously and with bad intent has cancelled the unit of the complainant by citing the reason which are contrary to the facts.
- XIV. That the complainant visited the project site of the respondent and was shocked to look at the state of affairs. No work was being carried out by the as demonstrated above clearly reflects that respondent has played fraud upon the complainant. It is very much apparent that the construction of the unit is nowhere near to the completion and the respondent has played upon fraud deceiving the complainant on one pretext or the other as described above; which clearly depicts the ulterior motive of respondent to fraudulently extract money from the innocent people.

- XV. That due to the fault of the respondent, the complainant have been deprived of right of business/earnings for a long time and have suffered immense harm, injury and loss, including financial loss, physical harassment and mental stress and agony and to no avail have been running from pillar to post, while the respondents have been sitting put on their hard earned money and misusing it for other purposes outside the scope permitted under law.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- Direct the respondent to handover possession and to pay assured return as per MoU.
 - Restrain the respondent from increasing super area more than 10%.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent vide its reply dated 03.09.2025 has made the following submissions: -
- That the complainant made an application for provisional allotment of a unit bearing no. SH- G-56 on the Ground floor measuring a tentative super area of 403.56 sq. ft. for a basic sale price of Rs.61,06,367/- inclusive of Rs.2,13,887/- towards EDC/IDC.
 - That one of the offers made by the respondent at that point in time 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 04.10.2019 with the respondent from the retail unit SH-56, tentatively admeasuring an area of 403.56 Sq. Ft determining all rights and liabilities of the parties.

- iii. That the total agreed consideration for allotment as per MOU is Rs.61,06,367/-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.35,08,066/-, including GST, to the tune of Rs. 3,55,728/-. Hence, the basic sale price paid by the complainant is Rs. 31,69,811/-.
- iv. 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 77.61/- 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 7 of the MOU. It is submitted that the construction and development of the project were affected due to various force majeure conditions.
- v. That the construction and development of the project was affected due to the force majeure conditions such as shortage of labour, stay on construction due to orders passed by NGT, lack of infrastructure facilities, implementation of social schemes like NREGA and JNNURM, shortage of sand and bricks, demonetization, implementation of GST, violations of the terms of the agreement by several allottees and lockdown due to the COVID-19 pandemic. It is pertinent to mention here 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.
- vi. That after mutual understanding between both the parties, the tentative super area of the unit has changed from tentative super area 403.56 sq.ft to tentative super area 512.59 sq. ft for a basic sales price of Rs. 70,89,120/- (inclusive of Rs. 3,02,428/- towards EDC/IDC). It is submitted that the complainant never objected to the unit super area change and rather willingly executed an agreement for sale dated 25.05.2022 and an MOU

- dated 28.05.2022 with the respondent for the same unit. The complainant herself willingly signed the agreement for sale and MOU after duly reading the clauses stipulated therein. The complainant was neither forced nor influenced to sign the same. It is submitted that since the earlier unit super area of the unit ceases to exist as the allotment has been transferred to the same unit bearing no G-56 with new super area, the MOU date 04.10.2019 under which the respondent was liable to pay pre-possession lease rental also stands cancelled superseded and hence the respondent is under no obligation to pay pre-possession lease rental to the complainant, it was mutually agreed between the parties that though the MOU stands cancelled yet the payment plan for the new unit will remain the same. It is submitted that it is the agreement for sale dated 25.05.2022, which is now the governing contract between the parties, and the same does not provide for pre-possession lease rental to be paid to the complainant. It is submitted that Clause 24 of the agreement for sale dated 25.05.2025 specifically mentions that the agreement supersedes any and all other agreements etc.
- vii. That as per the agreement for sale executed between the parties on 25.05.2022, the possession of the retail unit was supposed to be handed over to the complainant within a period of 24 months with an additional grace of 6 months from the date of execution of the agreement, subject to force majeure conditions. Further, only symbolic/constructive possession is to be handed over to the complainant since the unit booked by the complainant is for leasing purposes.
- viii. That prior to the COVID-19 pandemic, the respondent was undertaking the development of the project in accordance with the Non-TOD (Transit-Oriented Development) Policy, 2016. However, due to significant regulatory changes introduced after the COVID-19 pandemic, the applicable policy was revised from Non-TOD to TOD by the competent authority, i.e., the Directorate of Town and Country Planning (DTCP), Haryana. 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. The respondent company, acting in good faith and in adherence to transparency, communicated a proposal to the complainant regarding the potential increase in the area of his unit. However, it is pertinent to note that no formal acceptance of the proposed change was received from the complainant.

- ix. That in the absence of any written acceptance or agreement from the complainant, the respondent company 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 executed between the parties.
- x. 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.
- xi. 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 403 sq. ft. to 769.30 sq. ft., in line with the approved building plan and in accordance with the applicable TOD policy guidelines.
- xii. That the respondent further issued an intimation letter dated 09.02.2024, which was duly dispatched to the complainant through speed post. Said communication clearly reflected the revised area of the complainant's unit, i.e., 769.30 sq. ft. Significantly, despite receipt of the said communication,

the complainant has till date did not raise any objection or protest regarding the revision in the unit area. 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.

- xiii. 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 issued a demand letter dated 23.12.2024 towards payment of EDC/IDC amounting to Rs.2,15,787 /-, and along with the balance sale consideration amount to Rs.81,92,523.25/-, along with interest for year 2023 to December 2024 amounting to Rs.13,54,267/-. Since the complainant did not come forward to make the payment, the respondent company again issued a demand letter dated 23.12.2024 towards the payment of EDC/IDC and balance sale consideration amount as per the payment plan amounting along with interest amounting to Rs.97,62,577.47/- is pending.
- xiv. That 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 fulfill his financial obligations under the Memorandum of Understanding and allotment terms. Finding no other alternative, the respondent company was constrained to issue a formal cancellation letter dated 22.04.2024 to the complainant, clearly intimating 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. 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 05.01.2025.

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

D. Jurisdiction of the Authority:

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

D.I Territorial Jurisdiction

9. 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

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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

11. 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.
- E. Findings on the relief sought by the complainant:**
- E.I Direct the respondent to handover possession and to pay assured return as per MoU.**
- E.II Restrain the respondent from increasing super area more than 10%.**
12. In the instant case, vide allotment letter dated 12.09.2019 and MoU dated 04.10.2019, the complainants were allotted a unit bearing no. G-56, Ground Floor, measuring 256.295 sq. ft. (carpet area) in the project of the respondent named 'Park Street' at Sector 85, Gurugram. Subsequently, an MoU dated 28.05.2022 and agreement for sale dated 25.05.2022 was also executed between the parties against the said allotment.
13. The complainant has submitted that the respondent had executed an MOU with the complainants on 04.10.2019 wherein respondent has acknowledge and receipt of the payment (to the extent of 50% total consideration) and further agreed to demand/receive the balance payment of 50% as per Schedule 1 of the payment plan i.e. at the time of offer of possession of retail block. As per MOU dated 04.10.2019, the respondent vide its clause 3.1 had assured the pre-possession lease rental @77.61/- per sq.ft. since 28.08.2019. Thereafter, on dated 25.05.2022 and 28.05.2022, the respondent executed the agreement to sell and MoU with the complainants, but with fresh and amended terms and conditions and without the consent and knowledge of the complainant and violating the terms and conditions of previous MoU and other relevant clauses. Soon after execution of the agreement for sale and MoU, the respondent refused to pay the assured return to the complainant and instead claimed the demand of balance amount towards 50% of the balance payment on the booking site along with payment towards increased super area. The complainants were continuously calling the respondent for their various defaults, their illegalities but they did not paid any heed and

further finally on 05.01.2025 issued a letter for cancellation of provisional allotment. The respondent has submitted that the area of the complainant's unit was increased from 403 sq. ft. to 769.30 sq. ft., in line with the approved building plan and in accordance with the applicable TOD policy guidelines and it has issued a letter dated 16.01.2024 to the complainant, intimating about the proposed revision in the area of his unit as per the revised building plan. Further, the complainant failed to make payment as per the payment plan. Consequently, the respondent company, after providing sufficient opportunity and in compliance with principles of natural justice, issued a cancellation letter dated 05.01.2025 to the complainant. Now the question before the Authority is that whether the cancellation made by the respondent vide letter dated 05.01.2025 is valid or not.

14. After considering the documents available on record as well as submissions made by the parties, it is observed that in terms of the payment plan agreed between the parties vide agreement for sale dated 25.05.2022, the balance consideration of Rs.39,56,918/- as well as other applicable charges against the unit in question was liable to be paid at the time of offer of possession. It is an admitted position that the respondent-promoter has, till date, not applied for the OC. However, vide its letter dated 09.02.2024 titled "*Intimation regarding Change in Super Area*", unilaterally enhanced the super area of the subject unit from 403.56 sq. ft. to 769.30 sq. ft., thereby effecting an increase of approximately 90.63%, and raised an additional demand on account thereof. Thereafter, the respondent proceeded to cancel the allotment of the subject unit without duly adjusting the outstanding pre-possession lease rental/AR, as applicable. It is further observed that the agreement for sale in respect of the subject unit was executed subsequent to the coming into force of the Act, 2016. Although Clause 1.8 of the agreement dated 25.05.2022 purports to permit an increase in the area up to 10%, the said stipulation is not in conformity with Clause 1.7 of the model agreement

for sale appended to the Haryana Real Estate (Regulation and Development) Rules, 2017, which permits variation in the area only to the extent of 5%. The demand raised on account of enhancement of the super area to the extent of 90.63%, vide letter dated 09.02.2024, is arbitrary in nature and cancellation made by the respondent in continuation of the above demand without adjustment of outstanding pre-possession lease rental/AR is bad in the eyes of law. Further, while cancelling the unit, the respondent has not followed the due procedure as prescribed under clause 9.3 of the agreement for sale annexed with the Haryana Real Estate (Regulation and Development) Rules, 2017 and the said act of the respondent is in contravention to the provisions of the Act, 2016 as well as Rules, 2017. In view of the above, the cancellation made by the respondent vide letter dated 05.01.2025 cannot be held valid in the eyes of law and is hereby set-aside.

15. With regard to the issue of variation in the area of the subject unit, the respondent-promoter is hereby directed to restrict any demand on account of variation in the area to the permissible limit of 5% as contemplated under Clause 1.7 of the 'agreement for sale' annexed with the Haryana Real Estate (Regulation and Development) Rules, 2017.
16. The complainant is further seeking relief with respect to payment of pre-possession lease rental/AR as per MoUs dated 04.10.2019 and 28.05.2022. It is observed that vide Clause 3.1 of the memorandum of understanding dated 04.10.2019, the respondent has promised to pay pre-possession lease rental/assured return from 28.08.2019 till the application of Occupation Certificate is filed for retail block, at the rate of Rs.77.61/- per sq.ft. of super area of the premises per month. Vide clause 3.1 of the MoU dated 28.05.2022, it was further agreed between the parties that no pre-possession lease rental is payable to the allottee from the date 01.06.2022 till 31.05.2023 and if the filing of application for occupation certificate is delayed beyond 12 months from the date 01.06.2022 for any reason other than force majeure, then the

developer would pay pre possession lease rental per month to be calculated after taking into account received consideration to the allottee on pro-rata basis from 13th month till the application of occupation certificate is filed for retail block.

17. 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;"

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.

18. The complainant is seeking unpaid assured returns on monthly basis as per the MOUs dated 04.10.2019 and 28.05.2022 at the rates mentioned therein. It is pleaded by the complainants that the respondent has not complied with the terms and conditions of the said MoUs. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same.
19. The MoUs dated 04.10.2019 and 28.05.2022 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.

20. 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. 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 complainants 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.
21. In the present complaint, the assured return was payable as per clause 3 of MoUs dated 04.10.2019 and 28.05.2022, which is reproduced below for the ready reference:

3.1. PRE-POSSESSION LEASE RENTAL as per MoU dated 04.10.2019

"The developer shall pay to the Allottee pre-possession lease rental from 28.08.2019 till the application of Occupation Certificate is filed for Retail Block, at the rate of Rs.77.61/- per sq.ft. of super area of the premises per month."

3.1. PRE-POSSESSION LEASE RENTAL as per MoU dated 28.05.2022

"No pre-possession lease rental is payable to the allottee for the period of 12 months starting from the date 01.06.2022 till 31.05.2023. If the filing of application for occupation certificate is delayed beyond 12 months from the

date 01.06.2022 for any reason other than force majeure as defined herein, then the developer/third party would pay Pre possession lease rental per month to be calculated after taking into account received consideration to the allottee on pro-rata basis from 13th month till the application of Occupation Certificate is filed for Retail Block of the building."

Thus, the assured return was payable @Rs.77.61/- per sq. ft. of super area of the premises per month w.e.f. 28.08.2019, till 31.05.2022 and from 01.06.2022 at applicable rate till the date of filing of application for grant of occupation certificate for the retail block to the competent authority.

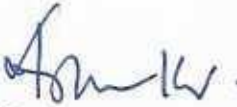
22. In light of the reasons mentioned above, the authority is of the view that as per the MoUs dated 04.10.2019 and 28.05.2022, it was obligation on the part of the respondent to pay the assured return. It is necessary to mention here that the respondent has failed to fulfil its obligation as agreed inter se both the parties in MoUs dated 04.10.2019 and 28.05.2022. Accordingly, the liability of the respondent to pay assured return as per MoU is still continuing. Hence, the respondent/promoter is directed to pay pre-possession lease rental/assured return to the complainants at the agreed rate i.e., @Rs.77.61/- per sq. ft. of super area of the premises per month w.e.f. 28.08.2019, till 31.05.2022 and from 01.06.2022 at applicable rate 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 understandings dated 04.10.2019 and 28.05.2022, after deducting the amount already paid on account of assured returns to the complainants.

F. Directions of the authority:

23. 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):
- The cancellation is set aside.
 - The respondent is directed to restrict any demand on account of variation in the area to the permissible limit of 5% as contemplated

under Clause 1.7 of the 'agreement for sale' annexed with the Haryana Real Estate (Regulation and Development) Rules, 2017.

- iii. The respondent is further directed to pay assured return to the complainants at the agreed rate i.e., @Rs.77.61/- per sq. ft. of super area of the premises per month w.e.f. 28.08.2019, till 31.05.2022 and from 01.06.2022 at applicable rate 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 understandings dated 04.10.2019 and 28.05.2022, after deducting the amount already paid on account of assured returns to the complainants.
 - iv. The respondent is directed to pay arrears of accrued assured return as per MoU 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.
 - v. The respondent/promoter shall handover possession of the unit to the complainants in terms of the agreement dated 25.05.2022 and execute conveyance deed in their favour as per Section 17(1) of the Act of 2016 after receipt of occupation certificate from the competent authority.
 - vi. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement dated 25.05.2022.
24. Complaint stands disposed of.
25. File be consigned to registry.


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.09.2026