

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

Complaint no. : 5227 of 2025
Date of complaint : 03.10.2025
Date of order : 29.09.2026

Rupesh Kumar Tyagi,
R/o: - S-125, Second Floor,
Uppal Southend, Sector 49, Gurugram-122018.

Complainant**Versus**

M/s Manglam Multiplex Pvt. Ltd.
Regd. office at: Cabin-1, LGF, F-22,
Sushant Shopping Arcade, Sushant Lok Phase-1,
Gurugram-122002.

Respondent

CORAM:
Arun Kumar

Chairman

APPEARANCE:
Sumit Mehta (Advocate)
Shriya Takkar (Advocate)

Complainant
Respondent

ORDER

1. This 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 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	M3M 65 TH Avenue, Sector 65, Gurugram
2.	Project area	14.4125 acres
3.	Nature of the project	Commercial
4.	DTCP license no. and validity status	15 of 2017 dated 02.05.2017 valid upto 01.05.2022
5.	Name of licensee	M/s Manglam Multiplex Pvt. Ltd.
6.	RERA Registered	Registered vide no. 01 of 2017 dated 14.06.2017 subsumed in Registration no. 32 of 2023 dated 02.02.2023 and valid upto 01.05.2025
7.	Allotment Letter	01.03.2018 (Page 37 of complaint)
8.	Unit No.	R1 UG 23 Block 1 (Page 37 of complaint)
9.	Unit Area Admeasuring	Carpet Area 170.84 sq. ft. Super Area 419.11 sq. ft. (Page 37 of complaint)
10.	Agreement for sale	28.05.2019 (Page 64 of complaint)
11.	Possession clause	POSSESSION OF THE UNIT 7.1 The promoter agrees and understand that timely delivery of possession of the Apartment alongwith the car parking space(s), if any, to the Allottee and the Common Areas to the Association of Allottees or the Competent Authority, as the case may be, as provided under the Act and

		<i>Rule 2(1)(f) of the Rules, 2017, is the essence of the agreement.</i> (Page 86 of complaint)
12.	Due date of possession	30.12.2022 Definition Clause (I) as per agreement- ("Commitment Period" shall mean 30.06.2022 as notified by the promoter to the Authority, at the time of registration of the project.... + 6 months grace period on account of Covid-19)
13.	Total sale consideration	Rs.1,13,78,804/- (As per page no. 74 of the complaint)
14.	Amount paid by the complainant	Rs.1,06,51,590/- (as admitted by the respondent at 22 of reply)
15.	Clause for the pre handover amount as per letter dated 02.03.2018	4. <i>"You the allottee have been well informed....., the company shall pay to you, the allottee a monthly amount which shall be based on calculation set out in Schedule 1("Pre Handover Amount"). You the allottee understands, agrees and acknowledges that the company shall pay such pre handover amount from 2 March 2018 till the date of notice of offer of possession. (Commitment period). The pre handover amount will be paid by way of postdated cheques drawn in the name of the allottee, subject to deduction of applicable taxes. Once the commitment period has expired, no further payments towards pre handover amount shall be made by the company to you, the allottee.</i> (as per page 48 of complaint)

		Schedule 1 <i>The company subject to the terms and conditions shall pay pre handover amount to the allottee @Rs.85.72 per sq.ft. per month. $85.72 \times 419.11 = \text{Rs.}35,926/-$ per month</i> (as per page 52 of complaint)
16.	Pre handover amount paid by the respondent	Paid from April 2018 till March 2020 amounting to Rs. 8,62,226/- Rs.8,26,765/- from 02.03.2020 till 30.09.2021 (As stated at page 29 of reply) <u>Total amount paid Rs.16,88,991</u>
17.	Occupation certificate	30.09.2021 (At page 191-193 of reply)
18.	Offer of possession	25.10.2021 Carpet Area 196.98 (Increased by 15.30%) Super Area 422.73 (Increased by 0.86%) (Page 120 of complaint)
19.	Pre cancellation	25.11.2021 (Page 205 of reply)
20.	Cancellation letter	10.12.2021 (Page 206 of reply) *After cancellation, the respondent re-instated the unit as the complainant made the payments. (as admitted by the respondent at page 54 of reply)
21.	Handover of possession	17.11.2022 (Page 223-224 of reply)

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That somewhere in the year 2018, the complainant was approached by the agents representing the respondent no. 1, for investing in the uniquely marketed, first of its kind mixed-land use project - in both of its residential and commercial compounds namely "M3M Heights" and "M3M 65th Avenue", licensed under the TOD Policy bearing License No. 15 of 2017, dated 02.05.2017 issued by the State of Haryana. As per the publicly available documents and the representations made by the Respondents the project was initially registered under Haryana RERA vide Registration No. 01 of 2017, later subsumed under Registration No. 32 of 2023. Copy of License bearing No. 15 of 2017, dated 02.05.2017.
- II. That relying upon representations that the units in the said project shall bear high rental value, the complainant booked one commercial unit and one residential unit, in the said TOD project, by making a payment of Rs.2,50,000/- towards booking amount of commercial unit and rs.2,50,000/- towards residential unit. At the time of presentation of the prospectus and brochures, the representatives of the respondent no. 1 also proposed a financing arrangement to the complainant, wherein the respondent no. 1 had an existing tie-up with Piramal Capital & Housing Finance Limited. Under this proposed scheme, the buyer/allottee could avail a loan against property from Piramal Finance, which would directly disburse payments to the respondent no. 1 as per the construction-linked payment plan, while the complainant would repay Piramal Finance through EMIs under a separate loan agreement.
- III. That the complainant had raised concerns regarding the high interest rate under the said proposed arrangement. In response, the respondent assured that the project would yield monthly assured returns from day one, which would be paid by the respondent no. 1 until the offer of possession. Thereafter, the respondent no. 1 would lease out the unit on behalf of the complainant, generating monthly rental income. This

representation was deceptively attractive, intended to induce the complainant into subscribing to a premeditated and misleading scheme designed solely to enrich the respondent and its financiers. Consequently, the complainant was subjected to an exorbitant interest rate of 13% imposed by Piramal Finance and later discovered that he was effectively precluded from availing financing from any other financial institution for the purchase of the said unit.

- IV. That relying on the repeated, prominent representations and advertisements being made by the respondents, the complainant agreed to get its commercial unit financed through the scheme proposed by the respondent no. 1, whereafter, the respondent no. 1 finally issued an allotment letter dated 01.03.2018 and an invoice for an amount of Rs.10,24,092/- towards provisional allotment of a commercial unit bearing number R1 UG 23, having a carpet area of 170.84 sq. ft and a super area of 419.11 sq. ft. for a total sale consideration of Rs.1,13,78,803/- located on the upper ground floor in Block 1 of the commercial compound named "65th Avenue" of its mixed-land use project, situated in Sector-65, Gurugram, Haryana. Additionally, an allotment letter for provisional allotment of a residential unit bearing no. MH TW-06/1808 in its residential component - M3M Heights, was also issued to the complainant.
- V. That, post issuance of the allotment letter/tax invoice dated 01.03.2018, the complainant contacted the respondent no. 1 on various occasions for execution of a builder buyer agreement (BBA) for the commercial unit, however, the respondent no. 1 kept on delaying the same on one pretext or another. After lapse of 3 months since the provisional allotment of the unit, as no BBA was executed by the respondent no. 1, the complainant visited the office of the respondent no. 1, however, instead of executing a BBA, the respondent no. 1, in order to win the trust and patience of the

complainant, offered to pay a "pre-handover amount", in the likes of an assured return, @Rs. 85.72 per sq. ft. per month, i.e., Rs. 32,333/- per month to the allottee. At the said time, the respondent no. 1 represented to the complainant that the respondent no. 1 shall directly deal with third-party for leasing of the complainant's unit and the same shall bear high rentals and as an act of assurance of timely handover of unit and the monthly rentals borne by the unit the respondent no. 1 issued a letter noting the terms of the arrangement regarding pre-handover amount, stating that the complainant shall receive the said assured return starting from 02.03.2018 (Clause 4) along with 16 post-dated cheques, (starting April 2018 to September 2019) towards payment of the said pre-handover assured return. It is relevant to note here that, in the said letter, under Clause 4, it is clearly acknowledged and stated that a sum of Rs.22,65,889/- was collected from the allottee towards the commercial unit, which is well over the 10% of sale consideration amount that may be demanded by any promoter/ builder before execution of the BBA, as per the provisions of RERA Act and HRERA Rules. It is imperative to note here that even after the lapse of 8 months since payment of booking amount no buyer's agreement was executed by the respondents and somewhere in the month of August 2018 the complainant, through some independent agents, found that respondent no. 1 had made multiple allotments of the same unit. Upon inquiry and multiple requests for issue of buyer's agreement on various occasions, the respondent no. 1, informed the complainant that due to some internal clerical errors, the residential unit allotted to the complainant was already allotted to some other allottee and the complainant was made to surrender his residential unit and all the documents issued to the complainant towards the residential unit were taken back, without copy, to the complainant.

- VI. That upon requests, the amounts paid towards the residential unit (Rs.7,29,670/-) was transferred to the account of the commercial unit. That, at the said time, the complainant became wary of the respondents unprofessional conduct and wished to withdraw from the project, however, respondents, in order to win the trust of the complainant, falsely represented that they had already secured leasing for entire commercial block in the project and it was promised to the complainant that his unit in the commercial block of the project shall bear attractive rental after possession and assured rental till possession. Relying on the representations of the respondents, the complainant fell into a trap as set by the respondents and agreed to continue with his booking. Further, in order to dissuade the complainant, the respondent no. 1 issued an amendment letter to the letter offering pre-handover amount thereby increasing the amount of pre-handover assured return to Rs.38,920/- per month. It is however necessary to note here that, no fresh cheques to the effect of increased amount of assured return were issued by the respondent no. 1 and the same stand due and payable till date.
- VII. That finally on 28.05.2019, after the lapse of more than a year since collection of the booking amount, the respondent no. 1 executed an agreement to sell (ATS) dated 28.05.2019, bearing Vasika No. 2258, registered before the office of Sub-Registrar Badshahpur, Gurugram, Haryana.
- VIII. That as per Clause 1.23 of the ATS dated 28.05.2019, the respondent no. 1 undertook to put the said unit on lease, or other arrangement(s), on behalf of the allottee. It is relevant to note here that, since the very inception, the respondents have time and again represented and assured high monthly rentals from the commercial unit, and in order to win the trust of the allottee, even offered to pay monthly assured returns. That as per the understanding in the ats and the pre-handover

amount letter, the complainant was guaranteed a monthly return from the beginning, qua the assured return and then by way of lease rental. Accordingly, timely handover of unit, monthly assured return and the necessary leasing of the unit; all form an integral part of the services of the respondent no. 1. However, to the utter dismay of the complainant, the respondents have failed to fulfil its obligations as no lease has been executed for his unit till date, nor the complainant is allowed to lease out the said unit independently and thus, actual physical possession of the unit cannot be deemed to be affected in favour of the complainant till date. It is also imperative to note here that, since the respondents had failed to pay the difference of amended pre-handover assured return, the complainant has escalated the said concern several times before the respondents but to no avail, as till date, the said assured return is due and payable.

- IX. That acting completely ignorant to the said concerns, the respondent no. 1, kept on raising demands, based on alleged construction updates, however, upon inspection of the project site, it was evident that the constructions updates being claimed were misconceived and false. It is relevant to note here that, in March 2020, during the surge of the COVID-19 pandemic, the respondent no. 1 stopped making any payments towards the monthly assured return and upon queries, informed the complainant that due to financial distress and a dearth of liquid cash, the amounts of monthly assured return shall be adjusted against the remaining total sale consideration, at the time of handover of unit.
- X. That payments were duly made to the respondent no. 1, as per the terms of the agreement, as and when demanded by the respondent no. 1, and the said payments were inclusive of GST. Before issuance of any offer of possession by the respondents, almost 80% of the total sale consideration amount was already paid by the complainant.

- XI. That the carpet area of the unit of complainant was unilaterally increased to 196.98 sq. ft. (earlier - 170.84sq. ft) and super area to 422.73 sq. ft (earlier -419.11sq.ft.) and a total demand of Rs.26,58,168/- was raised thereof, calling upon the complainant to clear his dues and take possession of his unit.
- XII. That the notice for offer of possession was merely a tactic by the respondent no. 1 to do away from its obligation to pay the pre-handover assured return, as due to the ongoing construction works of the adjacent residential block, no possession was practically possible. Instead of giving any clarifications or rebate to its allottees, the respondent no. 1, acting in an arbitrary manner, threatened illegal cancellation of the provisional allotment of the complainant's unit, through a cancellation notice dated 10.11.2021, citing defaults in payments which were baseless and arbitrary, as the complainant's unit was financed through the respondent no. 1's financier and were directly remitted in the respondent no. 1's designated account. It is further submitted that, the complainant kept on seeking clarity on the status of leasing arrangement, however, even after the lapse of more than 3 years and offer of possession, neither the assured returns were fully paid nor any leasing arrangements were secured by the respondents, in clear breach of the understanding and the terms of allotment, agreement to sell and letters issued by the respondent no.1.
- XIII. That as none of the allottees of the commercial block could practically occupy and possess their commercial units while the construction works of the overhead residential block continued, after the lapse of 13 months from the in-eligible notice of possession, the respondent no. 1 called upon the complainant for effectuating the actual handover of the unit in favor of the complainant, vide a letter dated 17.11.2022.

- XIV. That the respondent no. 1 had expressly committed to pay an assured return on investment until the date of possession, as per the assured return letter. The assured return was revised from Rs.35,926/- to Rs.38,920/- per month with effect from April 2018, however, the differential amount of Rs. 2,994/- per month was never paid and was paid only up to March 2020. No payments were made thereafter, despite the fact that the unit was neither handed over for personal use, nor leased by the respondent no. 1.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- Direct the respondent to pay delay possession charges.
 - Refund or adjust the excess amount charged for increase in super area.
 - Direct the respondent to pay the complainant a sum of Rs.9,55,778/- towards outstanding returns along with interest.
 - Supply copy of OC, approved layout plans and other statutory approvals.
 - Direct the respondent to pay compensation for failure to lease the unit and for loss of rental income.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested the complaint on the following grounds:
- That the complainant after conducting his own due diligence and independent enquiries applied for booking of a commercial unit in the M3M 65th Avenue, commercial component of mixed land use project being developed in a planned and phased manner by the answering respondent in sector 65 Gurugram vide application form and paid an amount of Rs.2,50,000/- towards part booking amount. It is submitted that the complainant on his own free will and understanding and after having read and understood all the terms of the application form, duly signed the same. In due consideration the commitment to comply with the terms of the

- booking/allotment and make timely payments of demands, the complainant was allotted commercial unit bearing no. R1 UG23 vide allotment letter dated 01.03.2018 by the respondent. The cost of the unit for carpet area admeasuring 170.84 sq. ft. was Rs.1,13,78,804/- plus other charges. The complainant opted for the specific payment plan. The respondent company upon issuance of the allotment letter requested the complainant to deposit an amount of Rs.10,24,092/- that was due on or before 15.03.2018.
- ii. That in view of the booking and commitment to make timely payments, the respondent offered the complainant a monthly pre-handover amount to provide the complainant the comfort of the respondent company's commitment to deliver the unit on time, as a gesture of goodwill. It is submitted that an amount to the tune of Rs.8,62,226/- has been paid to the complainants as pre-handover amount with effect from April 2018 till March 2020.
- iii. That the complainant was desirous of availing loan facility accordingly, tripartite agreement dated 14.05.2019 was executed between the Piramal Capital & Housing Finance Limited, complainant and respondent herein. After constant follow ups with the complainant, the buyer's agreement was executed between the complainant and the respondent on 28.05.2019 and the same was duly registered vide vasika no. 2258. It is pertinent to mention that the buyer's agreement duly covers all the liabilities and rights of both the parties. The due date of possession of the unit in question was 30.06.2022. Further, the Real Estate Regulatory Authority, Haryana vide notice dated 26.05.2020 granted six-month extension due to COVID-19 pandemic to all promoters of their respective projects. Therefore, the due date comes out to be 30.12.2022.
- iv. That the complainant had also booked residential unit bearing no. MH TW-06/1808 in M3M Heights, residential component of the mixed land use project. The complainant approached the respondent no. 1 and requested

that the amounts paid towards the residential unit in M3M Heights be transferred towards the present allotment. The respondent acceded to the said requested and accordingly, an amount of Rs.7,36,244/- was transferred towards the unit in question on 31.10.2019.

- v. That the respondent fulfilled its promise and completed the construction of the present phase much before the agreed timeline and the occupation certificate for the present phase where the unit in question was located was granted by the competent authorities on 30.09.2021 after due verification and inspection. The respondent company post receipt of occupation certificate offered the possession of the unit in question vide letter of offer of possession dated 25.10.2021. The respondent, despite the complainant being a defaulter credited an amount of Rs.8,26,765/- the accumulated pre-handover amount into the account of the complainant on 15.11.2021. Despite issuance of the demand letter, the complainant did not come forward to clear his outstanding dues, therefore, the respondent company issued pre-cancellation letter dated 25.11.2021 to the complainant calling upon the complainant to make payment of the outstanding dues as well as the interest charged within 15 days, failing which the allotment shall be cancelled/terminated.
- vi. That the complainant even after the issuance of the above-mentioned pre-cancellation letter failed to clear his dues and continued to breach the terms of the buyer's agreement for the reason's best known to him. As a consequence of the same, the respondent company was constrained to cancel the allotment of the complainants vide cancellation letter dated 10.12.2021. Thereafter the complainant approached the respondent company and requested for re-instatement of the unit. The respondent acceded to the said request and re-instated the unit subject to receipt of all pending dues from the complainant. The complainant was duly informed he was liable to pay an amount of Rs.5,71,964/- towards the increase in area of

the unit. However, the respondent company has only charged an amount of Rs.95,594/- (exclusive of taxes) towards the increase in area of the unit. The complainant thereafter on his own free will made payment of Rs.12,51,435/- and Rs. 12,641/- on 13.12.2021 towards his pending dues on his own free will and the respondent company duly acknowledged the same vide receipts. The respondent company as a goodwill gesture, credited an amount of Rs.68,436/- into the account of the complainant on 03.01.2022. Thereafter the respondent made multiple requests to the complainant to come forward and clear pending dues and take possession of the unit post completion of necessary formalities. The respondent in this regard also issued emails dated 22.03.2022, 29.06.2022, 22.07.2022, 08.08.2022, 21.09.2022, 04.10.2022.

- vii. That thereafter the complainant visited the project and the unit in question and after having satisfied himself with all aspects of the project executed indemnity cum undertaking 28.10.2022. Since, the complainant had availed loan facility from Piramal Capital & Housing Finance Limited therefore, no objection certificate was taken from the financial Institution before handing over the physical possession of the unit in question to the complainant. That after being satisfied with the area, specifications, dimensions, measurement, location, quality of construction of the unit and the materials used in relation to the unit and/or complex the physical possession of the unit was taken over by the complainants on 17.11.2022 and the keys of the unit in question were handed over to the complainant.
- viii. That the complainant, with malafide intentions, has deliberately suppressed the fact that the respondent company, vide email dated 25.01.2024, informed the complainant that a brand namely "Ansa Fashion" had expressed interest in leasing the subject unit, and the respondent company was willing to facilitate the said lease for the benefit of the complainant.

However, despite repeated follow-ups, the complainant has failed to grant any approval.

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 pay delay possession charges.

12. 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."

13. Clause 7 of the buyer's agreement dated 28.05.2019 provides for handing over of possession and is reproduced below:

"POSSESSION OF THE UNIT

7.1 The promoter agrees and understand that timely delivery of possession of the Apartment alongwith the car parking space(s), if any, to the Allottee and the Common Areas to the Association of Allottees or the Competent Authority, as the case may be, as provided under the Act and Rule 2(1)(f) of the Rules, 2017, is the essence of the agreement..."

14. As per clause 7.1 of the buyer's agreement, the due date of possession was 30.06.2022. 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 30.12.2022.
15. Proviso to Section 18(1) of the Act, 2016, provides that in case, the allottee does not intend to withdraw from the project, the promoter is liable to pay interest at the prescribed rate on the amount paid in respect of unit for every month of delay, till the handing over of the possession if it fails to complete or is unable to give possession of the unit in accordance with the terms of the agreement for sale or due to discontinuance of business. However, the

Authority observes that in the present case, the due date for possession was 30.12.2022 whereas, the respondent obtained occupation certificate in respect of the project on 30.09.2021 and subsequently offered possession of the subject unit to the complainant on 25.10.2021 i.e. prior to the due date of handing over possession. Accordingly, no case for delay possession charges is made out under Section 18 of the Act.

16. The Authority further observes that as per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under an obligation to handover possession of the unit and to get the conveyance deed executed in favour of the complainants. Whereas, as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. The occupation certificate for the project was obtained by the respondent on 30.09.2021 and possession of the unit has also been handed over to the complainant on 17.11.2022. In view of the above, the respondent is directed to get the conveyance deed executed in favour of the complainant in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within a period of three months.

E.II Refund or adjust the excess amount charged for increase in super area.

17. The complainant has submitted that the carpet area of the unit of complainant was unilaterally increased to 196.98 sq. ft. (earlier - 170.84sq. ft.) and super area to 422.73 sq. ft (earlier -419.11sq.ft.) and a total demand of Rs.26,58,168/- was raised thereof.
18. The Authority observes that the respondent vide letter dated 25.10.2021 intimated the complainant that the carpet area of the subject unit has been enhanced from 170.84 sq. ft. to 196.88 sq. ft., thereby effecting an increase of approximately 15.30%, and raised an additional demand on account thereof. It is further observed that clause 1.9 of the agreement for sale dated 28.05.2019 executed in respect of the subject unit and Clause 1.7 of the model

agreement for sale appended to the Haryana Real Estate (Regulation and Development) Rules, 2017, permits variation in the area only to the extent of 5%. Accordingly, the respondent-promoter 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.

E.III Direct the respondent to pay the complainant a sum of Rs.9,55,778/- towards outstanding returns along with interest.

19. The complainant is further seeking relief with respect to payment of pending pre-handover amount. The complainant has submitted that the respondent vide letter dated 02.03.2018 has committed to pay pre-handover amount @Rs.85.72 per sq. ft. per month, i.e., Rs.32,333/- per month to the allottee from 02.03.2018 till the date of notice for offer of possession and has also issued 16 post-dated cheques, (starting April 2018 to September 2019) towards payment of the said pre-handover/assured return. Further, the respondent vide amendment letter to the previous letter increased the pre-handover amount to Rs.38,920/- per month, but no fresh cheques to the effect of increased amount of assured return were issued by the respondent and the same stand due and payable till date. The respondent vide its reply has admitted that in view of the booking and commitment to make timely payments, the respondent offered the complainant a monthly pre-handover amount to provide the complainant the comfort of the respondent company's commitment to deliver the unit on time, as a gesture of goodwill. It is further admitted that an amount to the tune of Rs.8,62,226/- has been paid to the complainant as pre-handover amount with effect from April 2018 till March 2020 and accumulated pre-handover amount of Rs.8,26,765/- from 02.03.2020 till 30.09.2021 was also credited into the account of the complainant.

20. Upon consideration of the submissions made by the parties and the material available on record, the Authority observes that the respondent, vide its letter dated 02.03.2018, had unequivocally undertaken to pay the complainant a pre-handover amount at the rate of Rs.85.72/- per sq. ft. per month with effect from 02.03.2018 till the date of issuance of the offer of possession. In continuation thereof, the respondent issued a further letter dated 26.06.2018 confirming the aforesaid arrangement enclosing 16 cheques towards payment of the pre-handover amount for the period from April 2018 to September 2019. The complainant has, however, relied upon an amendment letter whereby the pre-handover amount is stated to have been enhanced to Rs.38,920/- per month. Upon examination of the said document, the Authority finds that the amendment letter does not clearly stipulate the period for which the enhanced pre-handover amount was to be payable and there is no further communication between the parties regarding it. In the absence of certainty and clarity with regard to the effective date and duration of the enhanced payment obligation, the claim of the complainant for payment of the pre-handover amount at the enhanced rate of Rs.38,920/- per month, on the basis of the said amendment letter, cannot be sustained and is accordingly declined. Accordingly, the Authority is proceeding to adjudicate the complainant's claim for payment of the pre-handover amount strictly in terms of the commitments contained in the letters dated 02.03.2018 and 26.06.2018.
21. The Authority observes that the letter dated 02.03.2018 read with letter dated 26.06.2018 regarding the pre handover amount 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 said letter 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. One of the integral parts of this agreement, the letter dated 02.03.2018 is the transaction of pre-handover amount/assured return inter-se parties. Since the agreement defines the buyer-promoter relationship therefore, it can be said that the agreement for assured return/pre-handover between the promoter and allottee arises out of the same relationship.

22. The money was taken by the promoter as a 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 promoter promised certain amount by way of pre-handover amount/assured return for a certain period. So, on its 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. The promoter is liable to pay that amount as agreed upon. Moreover, an agreement defines the builder-buyer relationship. So, it can be said that the agreement for pre-handover amount/assured return between the promoter and allottees arises out of the same relationship and is marked by the said letter dated 02.03.2018.
23. In the present complaint, the pre-handover amount/assured return was payable as per Clause 4 of the letter dated 02.03.2018, which are reproduced below for the ready reference:

4. *"You the allottee have been well informed....., the company shall pay to you, the allottee a monthly amount which shall be based on calculation set out in Schedule 1("Pre Handover Amount"). You the allottee understands, agrees and acknowledges that the company shall pay such pre handover amount from 2 March 2018 till the date of notice of offer of possession. (Commitment period). The pre handover amount will be paid by way of postdated cheques drawn in the name of the allottee, subject to deduction of applicable taxes. Once the commitment period has expired, no*

further payments towards pre handover amount shall be made by the company to you, the allottee.

Schedule 1

The company subject to the terms and conditions shall pay pre handover amount to the allottee @Rs.85.72 per sq.ft. per month."

Thus, the pre-handover amount/assured return was payable @Rs.85.72/- per sq. ft. of super area of the unit per month w.e.f. 02.03.2018, till the date of offer of possession.

24. In light of the reasons mentioned above, the authority is of the view that as per the letters dated 02.03.2018 and 26.06.2018, it was obligation on the part of the respondent to pay the pre-handover amount/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 letters dated 02.03.2018 and 26.06.2018. Accordingly, the liability of the respondent to pay pre-handover amount/assured return as per the above letters is still continuing. Hence, the respondent/promoter is directed to pay pre-handover amount/assured return to the complainant at the agreed rate i.e., @Rs.85.72/- per sq. ft. of super area of the unit per month from the date i.e., 02.03.2018 till the date of offer of possession i.e. 25.10.2021, as per the letters dated 02.03.2018 and 26.06.2018, after deducting the amount already paid on account of pre-handover amount/assured return to the complainant.

E. IV Supply copy of OC, approved layout plans and other statutory approvals.

25. The Authority observes that as per Section 19(1) of the Act, the allottee is entitled to obtain information relating to sanctioned plans, layout plan along with specifications, approved by the competent authority and such other information as provided in the Act or rules and regulations made thereunder or the agreement for sale signed with the promoter. Further, as per Section 11(4)(a) of the Act, 2016, the promoter is responsible for all obligations, responsibilities and functions under the provisions of the Act or rules and regulations made thereunder or the agreement for sale. Therefore, in view of the above, the respondent/promoter is directed to provide copy of statutory

approvals, plans as well as other specifications to the complainant within a period of 30 days from the date of this order.

E.V Direct the respondent to pay compensation for failure to lease the unit and for loss of rental income.

26. 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.* 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 and legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of compensation.

F. Directions of the authority:

27. 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):
- No case for delay possession charges is made out under Section 18 of the Act.
 - 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.
 - The respondent is directed to pay pre-handover amount/assured return to the complainant at the agreed rate i.e., @Rs.85.72/- per sq. ft.

of super area of the unit per month from the date i.e., 02.03.2018 till the date of offer of possession i.e. 25.10.2021, as per the letters dated 02.03.2018 and 26.06.2018, after deducting the amount already paid on account of pre-handover amount/assured return to the complainant.

- iv. The respondent is directed to get the conveyance deed executed in favour of the complainant in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within a period of three months.
 - v. The respondent is directed to provide copy of statutory approvals, plans as well as other specifications to the complainant within a period of 30 days from the date of this order.
 - vi. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement dated 28.05.2019.
 - vii. A period of 90 days is given to the respondent/promoter to comply with the directions given in this order and failing which legal consequences would follow.
28. Complaint as well as applications, if any stands disposed of accordingly.
29. File be consigned to registry.

**(Arun Kumar)**

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.09.2026