BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.:	**5958 of 2025**
Date of filing of complaint:	**21.11.2025**
Date of Order:	**0 8.09.2026**

Rakesh Kumar Jain
R/o: House No.-6221/ C-6, Opposite Delhi Public School, Vasant Kunj, South West Delhi-110070. **Complainant**

Versus

M/s VS Real Projects Pvt. Ltd.
Regd. Office at: 74, Basement Back Portion, Poorvi Marg, Vasant Vihar, New Delhi-110057 **Respondent**

CORAM:
Shri Arun Kumar **Chairman**

APPEARANCE:
Sh. Virender Dagar (Advocate) Complainant
Sh. Dhruv Rohatgi (Advocate) 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. No.	Particulars	Details
1.	Project name and location	"AMB Selfie Square", Sector-37 D, Gurugram
2.	Project area	3.775 acres
3.	Nature of the project	Commercial
4.	DTCP license no. and validity status	14 of 2014 dated 10.06.2014 valid up to 09.06.2026
5.	Name of the licensee	VS Real Projects Private Limited
6.	RERA Registered/not registered (Lapsed project)	57 of 2017 dated 17.08.2017 valid up to 16.08.2022
7.	Unit no.	Kiosk-22 & Third Floor (As per page no. 30 of the complaint)
8.	Unit area	393 sq. ft. (As per page no. 30 of the complaint)
9.	Memorandum of understanding	18.06.2016 (As per page no. 30 of the complaint)
10.	Date of buyer's agreement	04.04.2017 (As per page no. 44 of the complaint)
11.	Total sale consideration	Rs.37,04,418/- (As per page no. 51 of the complaint)
12.	Total amount paid by the complainant	Rs.38,29,016/- (As per details furnished on page no. 78 and 81 of the complaint)
13.	Amount of assured return paid by the respondent	Rs.10,13,506/- (As per page no. 108 of the reply)
14.	Possession Clause	***16. Possession of the Unit*** *16.1 The Company, based upon its present plans and estimates, and subject to all exceptions,* ***proposes to handover possession of the unit within thirty-six (36) months computed from the date of execution of buyer's Agreement, excluding***

		additional grace period of twelve months, subject to force majeure circumstances and reasons beyond the control of the company ("Commitment Period") (As per page no. 58 of the complaint)
15.	Assured Return clause	***2. Assured Return*** ***2.1 The developer agrees and undertakes to pay to the allottee assured return as under:*** (As per page no. 32 of the complaint)
16.	Due date of delivery of possession	04.10.2020 (**Note:** Due date is calculated 36 months from the date signing of the agreement i.e., 04.04.2017 plus 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects

Amount of monthly Assured return	*Payable from*	*Payable Till*
18,762/-	*22.06.2016*	*18 months from the date of booking i.e., 18.05.2016*
18762/- +14551/-	*On receiving the next payment towards BSP as per payment plan within 18 months from booking*	*Till issuance of letter of offer of possession*

		having completion date on or after 25.03.2020.)
17.	Offer of possession	Not offered
18.	Occupation certificate	Not obtained

B. Facts of the complaint:

3. The complainant has made the following submissions:

I. That the complainant is a peace-loving citizen of India and is presently residing at House no. 6221, C-6, Opposite Delhi Public School, Vasant Kunj, South West Delhi-110070, peacefully with her family members.

II. That the complainant booked the commercial unit with builder M/S VS Real Projects Pvt. Ltd. in their project "AMB Selfie Square" in Sector-37 D, Gurgaon with the respondent.

III. That the complainant has paid the total booking amount of Rs.2,00,000/- vide cheque dated 18.05.2016 as a provisional booking for allotment of one unit/space.

IV. That the complainant always paid the demand raised by the respondent from time to time and the complainant booked Kiosk no. 22 in the respondent's project admeasuring 393 sq. ft. as per MOU dated 01.06.2016, for a total consideration of Rs.38,82,690/-.

V. That as per the MOU, the respondent assured a monthly return of Rs.33,313/- until the date of possession. The respondent had stipulated in the construction schedule that the retail structure would be completed by 01.11.2017 and the entire project by 31.05.2019. However, till date, the project has not been completed.

VI. That as per records, the complainant has paid Rs.38,28,498/- up to 29.03.2018.

VII. That the respondent unilaterally stopped payment of assured returns from March, 2019 onwards, citing COVID-19 and adjusted these amounts against cost without the complainant's consent.

VIII. That as per MOU dated 16.07.2020, the Respondent agreed that if possession is delayed beyond 31.03.2021, assured returns of Rs.33,313/- per month would continue till possession. However, the said promise has not been honoured.

IX. That the total pending assured return for 65 months amounts to Rs.21,65,345/- which remains unpaid, along with interest @ 12% p.a. as per law.

X. That the respondent has also made false claims of certain payment and expenses without substantiating them or obtaining the complainant's approval.

XI. That the respondent has attempted to offer alternative units in place of Kiosk-22 without the complainant's consent.

XII. That at the time of booking the unit it was clearly told to the complainant that the possession of the unit should be handed over within 36 months from the date of booking and the respondent had not given possession even after the passing of nearly 9 years. The complainant had purchased the said unit in a believe that after the passage of 3 years after the booking, he would be able to start his own business but unfortunately all his plans got shattered as till now the construction of the said project is not completed even after making such a big investment. The delay in possession is totally unethical and shall be considered as an unfair business practice and now it is evident from the facts stated above that the respondent was only after the customer's money without any intention to complete the project.

XIII. That the complainant has visited in the office of the respondent time and again and requested the concerned person of the respondent but it did not leave in a dent in their deaf ears even they did not pay any heed to the request of the complainant. The complainant requested them many times through

letters, phone calls, e-mails to handover the possession of above said unit, but all in vain.

XIV. That there is every likelihood that the respondent wants to cheat the complainant, the respondent cannot be allowed to act despotically and arbitrarily taking advantage of its monopoly. The complainant is left with no alternative but to knock the doors of this Hon'ble Authority for redressal of his grievances.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

i. Direct the respondent to hand over the possession of the unit booked and to pay the assured return with interest till the possession.

ii. Direct the respondent to pay 12% interest on the principal amount of Rs.38,28,498/- for the delay i.e., till 31.08.2025 till possession.

iii. Direct the respondent to pay a sum of Rs.5,00,000/- for the mental agony and pain suffered by the complainant due to the above-said deliberate and dishonest behaviour of the respondent.

iv. Direct the respondent to pay a sum of Rs.3,50,000/- as litigation charges/expenses including counsel's fees to the complainant.

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:

I. That the present complaint is not maintainable in law or on facts. The complainant has filed the present complaint seeking only the delay possession charges and possession. The present complaint is highly pre-mature, as the same has been filed before the receipt of occupation certificate or issuance of the offer of possession.

II. That the complainant has got no locus standi or cause of action to file the present complaint and the same is barred by limitation. The present complaint is not filed in accordance with the provisions of law especially with the provisions of the RERA Act and rules and regulations made thereunder thus, the complaint is liable to be dismissed. The Complainant is estopped from filing the complaint for his act, conduct, admission, commission and laches.

III. That the complaint is bad for non-joinder and mis-joinder on necessary and un-necessary party. Therefore, the complaint is liable to be dismissed on this ground alone.

IV. That the complaint is barred by the principal of res-judicata, estoppel, waiver, acquiesce and hence the present suit is not maintainable thus liable to be dismissed.

V. That the complainant is not an "aggrieved party" or "allottee" as defined under the Act but is an investor who had admittedly booked the unit as a speculative investment in question in order to realise quick profits from its resale.

VI. That the present complaint seeking the relief of Assured Returns/ Minimum Lease Commitment is not maintainable. It is pertinent to mention herein that the respondent cannot pay the "Assured Returns" to the complainant by any stretch of imagination in the view of prevailing laws. On 21.02.2019 the Central Government passed an ordinance "Banning of Unregulated Deposits, 2019" to stop the menace of unregulated deposits, the "Assured Returns Scheme" given to the complainant fell under the scope of this ordinance and the payment of such returns became wholly illegal. That later, an act by the name "The Banning of Unregulated Deposits Schemes Act, 2019" notified on 31.07.2019 and came into force. It is provided in section 8 of the act that there

will be establishment of designated court to handle cases related to these schemes like assured return. That under the said Act all the unregulated deposit schemes such as "Assured Returns" have been banned and made punishable with strict penal provisions. That being a law-abiding company, by no stretch of imagination the respondent can continue to make the payments of the said Assured Returns in violation of the BUDS Act.

VII. That the present complaint has been filed to claim the relief of Assured Returns, basis an MOU dated 01.06.2016, which is an independent investment agreement and not a buyer's agreement or an allotment agreement. The said MOU dated 01.06.2016, filed by the complainant, is not a buyer's agreement, which is an independent document executed between the parties. The present complaint, seeking performance of the commercial obligations between the parties, arising out of an investment Agreement/MOU dated 01.06.2016 is not maintainable before this forum, nor does this Authority, under the RERA Act, is empowered or vested with the jurisdiction to grant any reliefs of the nature as sought by the complainant. The present dispute, as projected is a commercial transaction/ commercial dispute, for which the remedy lies elsewhere and not under RERA. The present complaint is liable to be dismissed with costs.

VIII. That the complainant approached the answering respondent and evinced an interest to purchase a unit in the commercial colony being developed under the name and style of "AMB Selfie Square" situated in Sector 37D, Gurugram. It is pertinent to mention that only after being fully satisfied with regard to all aspects of the project, including but not limited to the capacity/capability of the answering respondent to undertake conceptualization, promotion, development and construction of the same, the complainant took an independent and informed decision to purchase a unit in the said project.

IX. That the complainant duly accepted the terms and conditions forming part of the application form and undertook, *inter alia*, to execute the buyer's agreement in the standard format of the answering respondent. Thereafter, Kiosk bearing no. 22, third floor tentatively admeasuring 393 sq. ft. (super area) in the said project was allotted in favour of the complainant.

X. That thereafter, the respondent issued an allotment letter dated 07.07.2020, to the complainant, confirming his allotment of Kiosk bearing No. 22, third floor, in the project in question, on the terms and conditions contained therein. It needs to be highlighted that the booking of the complainant pertains to the pre-RERA era.

XI. That the parties had also entered into an MOU dated 01.06.2016, as an independent commercial transaction for the payment of Assured Returns. It needs to be highlighted that the said MOU was independent of the buyer's agreement.

XII. That a unit buyer's agreement having analogous terms and conditions were executed between the respondent and the complainant for the unit. The complainant has intentionally not placed on record the duly executed buyer's agreement. It is pertinent to mention that the complainant was aware of terms and conditions under the aforesaid agreement and after being satisfied with each and every term, the complainant agreed to sign on the same, willingly, voluntarily with freewill and full consent. It is pertinent to mention here that as per clause 16 of the buyer's agreement, the respondent company proposed to handover the possession of the unit within 36 months from the date of execution of buyer's agreement, with a further grace period of 12 months. However, the said period of handover was subject to force majeure conditions.

XIII. That it was also a term of the buyer's agreement in clause 36 that the buyer's agreement supersedes any and all other arrangements, agreements or correspondences between the parties.

XIV. That the unit buyer's agreement was executed on 04.04.2017. The world at large has witnessed COVID-19 pandemic and the Government of India imposed a lockdown on all commercial activities in the light of the ongoing pandemic situation from 22.03.2020. Due to uncertainty and fearing sickness and the epidemic, most of the construction workers left for their home towns. Although the contractors received the permission to commence work on site during the Month of May, the non-availability of manpower impacted the productivity very severely. The above has resulted in delays in construction of the project, for reasons that essentially lie beyond the control of respondent. Further, to increase the misery of the respondent, the labourers started migration towards their hometown. Post lockdown, the labourers did not return full-fledged. Surge of covid second wave and apprehension of covid third wave also delayed the return of labourers to work sites and hence, delays were caused.

XV. That in addition to the above hinderances, it is also pertinent to mention here that construction of real estate projects in Delhi NCR region was put on halt on various occasions by the various courts, Authorities etc. to mitigate the adverse effects of the pollution. Due to such ban on construction, the promoter was constrained to halt the development work in compliance of various order which effected the timely completion of the project. it is to note herein that the said delay was completely beyond the control of the respondent and thus, the respondent is entitled for extension for such period of delay.

XVI. That due to above unforeseen circumstances and causes beyond the control of the respondent, the development of the project got decelerated. that it is pertinent to mention herein that such delay was un-intentional. it is also submitted that the respondent was bound to adhere with the order and notifications of the courts and the government.

XVII. That in order to make the buyer's agreement, the respondent issued letter dated 19.07.2021, calling upon the complainant, to come forward for the registration of the buyer's agreement. However, the complainant, paid not heed to the said requests.

XVIII. That due to the pandemic, the respondent alike other several promoters, suffered financial issues and accordingly, sent an adjustment proposal for the payment of Assured Returns, vide letter dated 11.06.2020, giving the complainant the details of the adjustment of the due Assured Returns. It is also a matter of record that the complainant had paid a total of Rs.10,13,506/- as assured returns up to 20.02.2020, i.e., till the onset of Covid-19. Pursuant to the above adjustment proposal, the complainant and respondent agreed on the revised proposal and accordingly, an Addendum to MOU dated 16.07.2020 was shared with the complainant, but the same was not signed due to the pandemic. however, it needs to be mentioned that the said agreement was mutually agreeable, as the complainant never sent any objection to the same and even by conduct accepted the same, which is also evident from the pleadings of the complaint.

XIX. That from the above, it is clear that the said arrangement had overridden the terms agreed under the original MOU dated 01.06.2016. Accordingly, the respondent had agreed and the complainant had accepted by conduct the terms under the Addendum, whereby the respondent agreed to pay the accumulated Assured Returns in the future demands and even agreed to pay

6% interest on the amount of unpaid consolidated amount of Assured Return. It was also agreed that in case the accumulated amount exceeds the total dues payable by the complainant, the respondent shall allocate additional duly constructed area or refund the balance unpaid/ unadjusted amount. thus, the respondent had duly secured the complainant of his due Assured Returns. it is submitted that the offer of possession is yet to be issued after the receipt of the occupation certificate and the respondent shall compute the outstanding dues and adjust the Assured Returns as and when the stage arrives.

XX. That the construction of the project in question is in advance stages and the respondent shall soon apply for the grant of the occupation certificate. the present complaint seeking delay possession charges is pre-mature and liable to be dismissed.

XXI. That the complainant by filing the present complaint and by taking such baseless and untenable pleas is just trying to conceal the material facts in order to somehow cover up his own wrongs, delays and latches and to wriggle out of his contractual obligations by concocting false and frivolous story. Despite all the goodwill gestures extended by the respondent, the complainant is trying to illegally extract benefits from the respondent and his main aim is to cause wrongful gain to himself and wrongful loss to the respondent from time to time.

XXII. That the law of equity and justice cannot allow such complainant to reap benefits of such opportunistic attitude and will strive for balance of rights of both the parties at dispute. That this Hon'ble Authority should not allow the complainant to mislead the Hon'ble Authority and to misuse of the Act, 2016 for harassing the builder. Despite the utter failure of the complainant in

fulfilling the obligations, the respondent has always showed exemplary conduct.

XXIII. That the respondent has acted strictly in accordance with the terms and conditions of the agreement between the parties. There is no default or lapse on the part of the respondent. The allegations made in the complaint inter-alia that the respondent has failed to comply with the obligations under the agreement. On the contrary, it is the complainant who is in clear breach of the terms of the agreement by not remitting the outstanding amount of the said unit in question within the stipulated time. That the respondent is fulfilling its obligations under the buyer's agreement. there is no default or lapse in so far as the respondent is concerned. The allegations levelled by the complainant are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

XXIV. That the occupation certificate of the unit in question is yet to be received, pursuant to which, an offer of possession with final demands shall be issued to the complainant. The delay possession charges, if any, if found payable to the complainant, would also be adjusted therein. Hence, the present complaint is highly pre-mature and liable to be dismissed. It needs to be highlighted that the delay possession charges, if any, cannot be calculated on the amounts credited by the respondent to the complainant and also not on the GST/ Service Tax component of the payments made by the complainant, as the said tax component is the amount paid to the statutory authority and not the respondent.

XXV. That the all the facts and submissions set out in the complaint are incorrect, and are denied as if the same are specifically set out herein and traversed, except those which are specifically admitted herein. Further, the contents of the preliminary objections, set out hereinabove, should be deemed to be

incorporated in reply to all paras of the complaint as well as in reply to the list of dates.

7. 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 submissions made by the parties.

E. Jurisdiction of the Authority:

8. The authority observes that it has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.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.

E.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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objection raised by the respondent:

F.I Objection regarding maintainability of complaint on account of complainant being the investor.

12. The respondent took a stand that the complainant is the investor and not the consumer and therefore, is not entitled to protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement dated 04.04.2017, it is revealed that the complainant is a buyer and has paid a considerable amount to the respondent-promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below 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;"*

13. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the builder buyer's agreement dated 04.04.2017, it is crystal clear that the complainant is a allottee as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under Section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of

an "investor". Thus, the contention of the promoter that the allottees being the investors are not entitled to protection of this Act also stands rejected.

F.II Objection regarding non-payment of assured return due to implementation of BUDS Act.

14. The respondent/promoter raised the contention that the respondent has stopped the payment of assured return due to implementation of BUDS Act by legislature, as the BUDS Act bars the respondent for making payment of assured return and assured rental linked with sale consideration of immovable property of allottee(s). But the Authority in ***CR/8001/2022*** titled as ***"Gaurav Kaushik and Anr. Vs. Vatika Ltd."*** has already held that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon and the Act of 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per Section 2(4)(l)(iii) of the BUDS Act of 2019. Hence, the plea w.r.t. non-payment of assured return is hereby dismissed.

F.III Objection regarding the circumstances being 'force majeure':

15. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as decisions of various courts which were beyond the control of the respondent, certain environment restrictions, weather conditions in NCR region, shortage of labour and COVID-19 outbreak etc. But all the pleas advanced in this regard are devoid of merit. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. The events taking place such as restriction

on construction due to various court orders were for a shorter period of time and the promoter is required to take the same into consideration while launching the project. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to hand over the possession of the unit booked and to pay the assured return with interest till the possession.

G.II Direct the respondent to pay 12% interest on the principal amount of Rs.38,28,498/- for the delay i.e., till 31.08.2025 till possession.

16. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

- **Assured returns**

17. The complainant is seeking unpaid assured returns on monthly basis as per the agreement at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said agreement. Though for some time, the assured returns were paid but later on, the respondent refused to pay the same by taking a plea that the same is not payable in view of enactment of the Banning of Unregulated Deposit Schemes Act, 2019. The authority has rejected the aforesaid objections raised by the respondent in ***CR/8001/2022*** titled as ***"Gaurav Kaushik and Anr. Vs. Vatika Ltd."*** wherein the authority has held that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon and the Act of 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per section

2(4)(l)(iii) of the Act of 2019. Thus, the plea advanced by the respondent is not sustainable in view of the aforesaid reasoning and case cited above.

18. 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 complainant-allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.

19. Further, the agreement defines the builder buyer relationship. It can be said that the agreement for assured returns between the promoter and allotee arises out of the same relationship. It is not disputed that the respondent is a real estate developer, and it had not obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per Section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottees later on.

20. The respondent in its reply dated 02.02.2026 mentioned that the respondent has paid an amount of Rs.10,13,506/- on account of assured returns up to 20.02.2020. In view of the above, the respondent is liable to pay the unpaid assured return to the complainant-allottee in terms of the MOU dated 18.06.2016 and buyer's agreement dated 04.04.2017 till due date of possession i.e., 04.10.2020.

- **Delay possession charges.**

21. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges with respect to the subject unit as provided under the provisions of Section 18(1) of the Act which 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."*

22. In the present case, the builder buyer's agreement was executed on 04.04.2017. As per clause 16 of the buyer's agreement dated 04.04.2017, the respondent proposes to handover the unit within 36 months of the execution of this agreement. Clause 16 of the buyer's agreement is reproduced below for the ready reference:

> ***16. Possession of the Unit***
> *16.1 The Company, based upon its present plans and estimates, and subject to all exceptions, **proposes to handover possession of the unit within thirty-six (36) months computed from the date of execution of buyer's Agreement, excluding additional grace period of twelve months, subject to force majeure circumstances and reasons beyond the control of the company ("Commitment Period")***
>
> **(Emphasis Supplied)**

23. Thus, the due date of possession is to be calculated 36 months from the date of agreement i.e., 04.04.2017. Therefore, the due date of possession comes out to be 04.10.2020 including grace period of six months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.

24. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. Proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been

prescribed under Rule 15 of the Rules. ibid. Rule 15 has been reproduced as under:

> *"**Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
> *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:*
> *Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."*

25. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules, ibid has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 08.09.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

> ***"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.***
> ***Explanation.** —For the purpose of this clause—*
> *(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
> *(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

26. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.

27. On consideration of documents available on record and submissions made by the complainant and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. As per possession clause in buyer's agreement, the due date of possession is 04.10.2020. However now, the proposition before the Authority is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges?

28. To answer the above proposition, it is worthwhile to consider that the assured return in this case is payable as per the MOU dated 18.06.2016 and the respondent is liable to pay assured return to the complainant-allottee @ Rs.18,762/- on monthly basis from 22.06.2016 till 18.11.2017 (18 months from the date of booking i.e., 18.05.2016) and thereafter Rs.33,313/-on receiving the next payment towards BSP as per payment plan within 18 months from booking till offer of possession. Thus, it can be said that the amount of assured return which the respondent has to pay is Rs.33,313/-. If we compare this assured return with delayed possession charges payable under proviso to Section 18(1) of the Act, 2016, the delayed possession charges are much better i.e., in this case the assured returns are payable at Rs.33,313/- per month till offer of possession whereas the delayed possession charges are payable approximately Rs.34,461/- per month.

29. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under Section 18 and assured return is payable even after due date of possession till the date of completion of the project, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.

30. In this case delay possession charges are higher as compared to assured return. Accordingly, the respondent is obligated to pay delay possession charges @ 10.80% p.a. on the amount paid by the complainant w.e.f. the due date of possession i.e., 04.10.2020 till actual handing over of possession or offer of possession plus two months after obtaining occupation certificate from the competent Authority, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules. The arrears of such interest accrued from 04.10.2020 till the date of this order by the authority shall be paid by the promoter to the complainant(s)-allottee(s) within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the complainant(s) before 10th of each subsequent month as per Rule 16(2) of the Rules, ibid.

- **Possession**

31. With respect to the aforesaid reliefs, the authority observes that there is no clause in the entire BBA which obligates the respondent to handover physical possession of the unit to the complainant. Furthermore, as per clause 16.2 of the agreement dated 04.04.2017, it was agreed between the parties that the term offer of possession is to be considered possession of the unit only. The authority further observes that the complainant has failed to put forth any document to show that the agreement thereto was executed under protest. Also, no objection/protest whatsoever, was made by the complainant at any point of time since the execution of the BBA. Accordingly, handing over the physical possession was never the intent of the respondent.

G.III Direct the respondent to pay a sum of Rs.5,00,000/- for the mental agony and pain suffered by the complainant due to the above-said deliberate and dishonest behaviour of the respondent.

G.IV Direct the respondent to pay a sum of Rs.3,50,000/- as litigation charges/expenses including counsel's fees to the complainant.

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

33. In the above-mentioned relief, the complainant sought the compensation and Hon'ble Supreme Court of India in case titled as ***M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (2021-2022(1) RCR(C) 357)***, has held that an allottee is entitled to claim compensation 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 & 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 & legal expenses. Therefore, for claiming compensation under Sections 12, 14, 18 and Section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under Section 31 read with Section 71 of the Act and Rule 29 of the Rules.

H. Directions of the authority

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

i. The respondent is directed to pay the amount of assured return at the agreed rate i.e., @ Rs.33,313/- per month from the date the payment of assured return has not been paid till 04.10.2020. The respondent is directed to pay the outstanding assured return amount, if any, at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @ 8.80% p.a. till the date of actual realization.

ii. Further, the respondent is directed to pay delay possession charges @ 10.80% p.a. on the amount paid by the complainant w.e.f. 04.10.2020 till

actual handing over of possession or offer of possession plus two months after obtaining occupation certificate from the competent Authority, whichever is earlier, as per section 18(1) of the Act of 2016 04.10.2020 till the date of this order by the authority shall be paid by the promoter to the complainant(s)-allottee(s) within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the complainant(s) before 10th of each subsequent month as per Rule 16(2) of the Rules.

iii. The respondent is directed to execute the conveyance deed of the allotted unit within the 3 months after the receipt of the OC from the concerned authority and upon payment of requisite stamp duty by the complainant as per norms of the state government.

iv. The respondent shall not charge anything from the complainant which is not the part of the builder buyer's agreement.

v. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

18 Complaint stands disposed of.

19 File be consigned to registry.

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 08.09.2026