

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

Complaint no.	:	6060 of 2025
Date of complaint	:	01.12.2025
Date of order	:	17.07.2026

1. Vinod Kumar

2. Manoj Kumar

Both R/o: Village Ulhavaas, Post Kadarapur, Tehsil
Sohna, District Gurugram.

Complainants

Versus

M/s Blackberry Realcon Private Limited

Having its Regd. Office at: 11th Floor, Paras Twin
Towers (Tower-B), Sector-54, Golf Course Road,
Gurugram - 122002.

Respondent no.1

M/s Yule Propbuild Private Limited

Having its Regd. Office at: 304, Kanchan House,
Karampura Commercial Complex, New Delhi -
110015.

Respondent no.2

M/s Commander Realtors Private Limited

Having its Regd. Office at: A-11, First Floor, NITI
Bagh, New Delhi - 110049.

Respondent no.3

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Shri Arun Kumar (Advocate)

Complainants

Shri Dhruv Rohatgi (Advocate)

Respondent no.1

Ms. Shivani Dang (Advocate)

Respondent no.2 & 3

ORDER

1. The present complaint has been filed by the complainant(s)/allottee(s) under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 29 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 there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	"Paras Square" at Sector-63A, Village- Behrampur, Tehsil- Sohna, Gurugram, Haryana.
2.	Project Area	2.20 Acres
3.	Project Type	Commercial complex
4.	DTPC license no.	23 of 2013 dated 17.05.2013
5.	RERA registered/Not registered	Registered 13 of 2018 dated 06.09.2018 Valid till 31.12.2018
6.	Date of approval of building plan	30.07.2013 (As mentioned in Clause B of BBA at page no.46 of complaint)
7.	Allotment letter	30.08.2013 (As per page no.36 of complaint)
8.	Unit no.	FF-57 (Unit type - Retail) (As mentioned in allotment letter at page no.36 of complaint)
9.	Unit area	420 sq. ft. (super area) (As mentioned in allotment letter at page no.36 of complaint) 418 sq. ft. (super area) (Reduced by 2 sq. ft. i.e., by 0.47%) (as per the letter dated 28.07.2018 issued along with offer of possession at page 158 of reply)



10.	Letter for Fixed Monthly income plan for unit no. FF-57 on First Floor in Paras Square	30.09.2013 (As per page 116 of complaint)
11.	Clause w.r.t payment of Fixed Monthly income	<i>The developer shall pay a monthly income Rs.46,200/- per month subject to deductions of taxes as applicable, which shall be payable on or, before 10th day of each calendar month.</i> <i>The Developer shall commence paying this fixed monthly income from the date 100% of the consideration for subject unit is paid to Developer. The fixed monthly income shall be stopped immediately with the offer of possession given by the seller/ Developer to the intending allottee(s)/ buyer(s).</i> <i>The developer shall pay the Allottee, monthly cheques in advance on quarterly basis as per fixed monthly income plan till offer of possession.</i> (As per page 116 of complaint)
12.	Date of builder buyer agreement	17.12.2013 (As per page no. 44 of complaint)
13.	Possession clause	7 Date of Completion. (a) Time of handing over the Possession (i) <i>The date of completion of the Project shall be Thirty-Six (36) months from the start of construction hereof, subject to force majeure or/and any other reason beyond the control of Developer, subject to all Allottee(s) having strictly complied with all the terms and conditions of this Buyer's Agreement and not being in default under any provisions of the same and all amounts due and payable by</i>



		the Allottee(s) under this Buyer's Agreement having been paid in time to the Developer, The Developer immediately upon the receipt of OC/CC, shall give notice to the Allottee(s), in writing, to take possession of the Unit for his/its fit-outs and occupation and use ("Notice of Possession"), on furnishing certain documents by the Allottee (s). (ii) The Allottee(s) agrees and understands that the Developer shall be entitled to a grace period of one hundred and Eighty (180) days over and above the period more particularly specified here-in-above in sub-clause (a)(i) of clause 7, for completion of the Project. (Emphasis supplied) (As per page no.53 of complaint)
14.	Date of issuance of consent for clearance from pollution control board	25.03.2014 (As per page no.151 - 153 of reply)
15.	Due date of possession	25.09.2017 <u>(25.03.2017+ 180 days)</u> [Computed from date of issuance of consent for clearance from pollution control board on 25.03.2014] Note: Grace period of 180 days is hereby allowed being unqualified and unconditional
16.	Total sale consideration	Rs.47,63,340/- (as per allotment letter dated 30.08.2013 at page no. 36 of complaint)
17.	Total amount paid by the complainant	Rs.43,55,820/- (As per customer statement dated 17.09.2025 at page no. 39 of complaint)
18.	Occupation certificate	23.07.2018 (As per page no. 154 - 155 of reply)

19.	Offer of possession	28.07.2018 (page no. 156 - 158 of reply)
20.	Fixed monthly income	Total Rs.24,11,640/- (Rs.12,05,820/- each complainant) (as per detailed provided at page 21-50 of reply) Paid from 23.10.2013 till 20.06.2018 (As per page 114 to 115 of complaint)
21.	Letter for payment of stamp duty charges for registration of conveyance deed	05.02.2019 (As per page no.118 of complaint)
22.	Reminder letter's	26.03.2024, 17.06.2025 & 11.12.2025 (As per page no. 121, 126 & 125 of reply)
23.	Final demand letter's	19.02.2020, 07.03.2020, 19.10.2020, 30.11.2020 & 22.04.2024 (As per page no.129, 123, 122, 120 & 124 of reply)
24.	Pre-cancellation letter	02.06.2021, 10.08.2021 (As per page no. 119 & 118 of reply)

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- I. That the respondent no.1 is a company duly incorporated under the Companies Act under the name and style of 'M/s. Blackberry Realcon Private Limited', who is the developer of the commercial complex project known as "Paras Square", on a piece of land total measuring 2.20 acres situated at Sector 63-A, Village Behrampur, Tehsil Sohna, District Gurugram.
- II. That the respondent no.2 is a company duly incorporated under the Companies Act under the name and style of 'M/s. Yule Propbuild Private Limited' and the respondent no.3 is a company duly incorporated under the Companies Act under the name and style of 'M/s. Commander Realtors

Private Limited', both are owners of the piece of land total measuring 2.20 acres situated at Sector 63-A, Village Behrampur, Tehsil Sohna, District Gurugram.

- III. That the respondent no.1 entered into an agreement with the respondent nos. 2 and 3 on 16.12.2011, duly registered with the office of the Sub Registrar, Sohna vide document No. 6413 dated 16.12.2011 for the development and marketing of the said project
- IV. That during the month of June and July 2013 the respondent no.1 have advertised in various modes of media including the newspapers that they are the builders of good repute and have obtained a license from the office of the Director, Town and Country Planning, Government of Haryana bearing No. 23 of 2013 dated 17.05.2013 under the provisions of the Haryana Development and Regulation of Urban Areas Act, 1976 in favour of the respondent nos. 2 and 3 and are developing a commercial project known as "Paras Square" on a piece of land total measuring 2.20 acres situated at Sector 63-A, Village Behrampur, Tehsil Sohna, District Gurugram and have committed to complete the project in all respect including the outer approach road and are committed to complete and deliver the same within 36 months from the date of booking.
- V. That the respondent no.1 has also advertised that it got the required building plan to construct the said commercial project, approved from the office of the DTCP, Haryana vide memo No. ZP-892/AD(RA)/2013/47504 dated 30.07.2013.
- VI. That the respondent no.1 has also advertised that it is committed to pay monthly assured return till the delivery of the possession of the commercial unit without fail to the allottees.
- VII. That the complainants who were in dire need of a commercial unit to earn their own livelihood were attracted by the said advertisement of the

respondent no.1 and when contacted the office bearers and the agents of the respondent no.1 they have allured the complainants that the respondent no.1 is committed to pay monthly assured return.

- VIII. That believing the assurance and promises so made by the agents, officials of the respondent no.1 to be true and correct the complainants decided to buy a commercial unit of the respondents and have paid a sum of Rs.43,55,820/- vide two cheques dated 25.07.2013 and 26.07.2013. Instead of the issuing receipt on the date of receipt of the said cheques on the same day i.e. 25.07.2013 and 26.07.2013, the respondent no.1 has issued receipts as late as on 05.08.2013.
- IX. That instead of issuing the welcome letter as well as the allotment letter on the date of receipt of the cheques i.e. 25.07.2013 and 26.07.2013, the respondent no.1 issued both the letter as late as 30.08.2013. Not only this the respondent no.1 ought to have issued the BBA on the date of receipt of the cheque or on the date of issuance of the allotment letter and welcome letter, purposefully, with the intention to cheat the complainants the respondent no.1 issued the required BBA as late as on 26.11.2013.
- X. That on the date of accepting the cheques, the respondent no.1 was supposed to enter in the required BBA, but to the utter surprise of the complainants the respondent no.1 issued a letter as late as on 26.11.2013 whereby the respondent no.1 sent two copies of the BBA containing pre-printed, dotted, without providing any room for the complainants to discuss or negotiate on any term thereof, for the signatures of the complainants and to return back the same to the respondent no.1 for the executing thereof. Upon receiving the said BBA, the complainants got the same read and understand through their lawyer and came to know that the terms are not in favour of their interest and the said BBA is one sided, biased, discriminating the complainants and is favouring the respondents. Some of such terms are submitted herein below:

- a. That in the recital F as well as in clause 5(a) of the BBA the respondents have provided that they have made available all the information and clarifications as required by the complainants prior to the BBA, while as no such information have ever been provided to the complainants.
- b. That in recital H the respondents have inserted that the respondent no.1 has allowed the complainants, the inspection of the building/ tower plans, ownership records of the land and all other relevant details to the satisfaction of the complainants. However, at no point of time any of the respondents have not allowed any such inspection to the complainants.
- c. That further in recital J, the respondents have mentioned that upon completion of all procedural formalities, the respondent no.1 has allotted/provisionally allotted a unit to the complainants in the said commercial complex. However, no procedural formality had ever been complied with the complainants as well as instead of entering into proper BBA, the respondents intentionally and deliberately have opted to issue the allotment letter dated 30.08.2013.
- d. That in clause 1.1(a)(ii) the respondents have inserted that the sale consideration includes no cost of fire-fighting and fire safety equipment, charges as required by the existing regulation. If due to any subsequent legislation/government order, — directives, guidelines or change/amendments in the fire safety norms including the National Building Code of India, 2005, and any subsequent amendment thereof, or in the event of deemed necessary by the respondent no.1 at its sole and absolute discretion, additional fire safety measures are undertaken, then the complainants undertake to pay without any protest or demur, within then (10) days from the date of written demand by the respondent no.1. It is submitted that at the time of advertising about the said commercial project, at the time of booking nothing in this regard was discussed by the agents, officials concerned of the respondent. Without obtaining any consent, the respondent unlawfully sue moto have inserted this clause.
- e. In clause 1.1(a)(iii) the respondents have inserted that the complainants agree, understand and confirm that all other charges and levies, as are specifically delineated in the BBA shall be paid separately over and above the sale consideration payable by the complainants as per the payment plan. However, at the time of booking or in the advertisement for the said project no such levy or other charges were discussed by the agents or officials of the respondents with the complainants.
- f. That in clause 1.1 (d) (ii) the respondents have provided that the complainants understand and undertake that in the eventuality of any increase or enhancement in the EDC, the same shall be payable by the complainants to discharge the payment of said EDC, shall entitled the respondent no.1 to terminate/cancel the BBA immediately without giving any notice to the complainants. However, not only at the time of booking or in the advertisement for the said project nothing in this regard discussed by the agents or officials of the respondents with the complainants but also



- have inserted such term with the sole intention to discriminate the complainants at the hand of the respondents and unlawfully usurp the hard-earned money of the complainants on false excuses.
- g. That in clause 1.1 (c) (i) the respondents without having discuss or obtaining any formal consent from the consent from the complainants have inserted that in case of non-payment of the enhanced EDC by the complainant, the respondents shall be at liberty to terminate/cancel the BBA immediately without giving any notice to the complainants. The complainants but also have inserted such term with the sole intention to discriminate the complainants at the hand of the respondents and unlawfully usurp the hard-earned money of the complainants on false excuses.
- h. That in clause 1.1 (f) the respondents have inserted that out of the amount(s) payable by the complainants towards the total sale consideration, the respondent no.1 shall treat 20% of the total sale consideration as earnest money, without discussing anything in this regard at the time of booking of the unit by the agents, officials of the respondent with the complainants. Not only this clause is against the public policy as ideally 10% is in practice and has attained public policy but also this clause have been used time and again by the respondents as its strongest weapon and using as a threat the respondents have time and again overcharged what have been discussed or assured at the time of the booking, with the threat that the respondents are entitled to forfeit the amount so deposited by the complainants and shall cancel their unit so booked.
- i. That in clause 1.1 (g) the respondents have provided for the PLC, while as nothing such was discussed at the time of booking by the agents or officials concerned of the respondent at the time of booking of the unit.
- j. That in clause 2 of the BBA, the respondents have inserted that the complainants agree and undertake to pay all additional amounts, including but not limited to any additional costs, expenses, operation of generator sets, deposits, electricity meter installation charges, distribution box installation chargers, charges of bulk supply of electrical energy, installation of additional transformers, sub stations or any transmission line in respect of commercial complex as demanded by the respondent no.1 and/or its nominee. However, at the time of booking the agents and officials concerned have discussed that the unit in question shall cost maximum a sum of Rs.44,10,840/- only including all charges such as EDC, IDC, all levies etc. and in addition thereto one car parking if needed by the complainants it shall cost Rs.3,00,000/- only and in toto the costs of the unit and car parking shall not be more than Rs.47,10,840/-.
- k. That vide clause 3 the respondents have inserted that in case of any delayed payment by the complainants to the respondents, the respondents shall charge interest as high as 24% per annum compounded at the time of every succeeding installment from the due date of installment, till the date of payment. While as in clause 9 (a) the respondents have provided the

complainants may demand an interest calculated at 9% per annum simple interest and that only in condition if the complainants having been complied with all obligations under the said BBA including but not limited to timely payment of the consideration and other charges as per the payment plan opted without any default during the payment tenure by the complainants, only in the event of any willful delay in handing over the possession subject to force majeure and/or any situation beyond the control of the respondents. From the bare reading of these two clause it is crystal clear that at the one hand for any small delay the respondents are entitled to charge interest 24% compounded and in reciprocity thereof, subject to such impossible conditions the respondents have not imposed the equal responsibility upon them but have provided for interest lesser than the RERA laws and at minimum at 9% and that to simple interest. This clearly shows that the complainants are always subject to discrimination at the hands of the respondents.

- l. That by inserting clause 6, the respondents have provided extra liberty for them to alter, change the layout and or design of the commercial project without obtaining any consent from the complainants or increase or decrease the size of the unit/tower/floor plans/location/number of units/floors/blocks or specifications etc. so booked and price thereof duly agreed without obtaining any formal consent from the complainants or other allottees. This clause is another classic example of discrimination of the complainants and/or other allottees at the hands of the respondent and making the whole BBA an unlawful and void contract.
- m. That at the time of booking of the unit by the complainants, the agents and the officials concerned of the respondents have assured that in any case the respondent will complete not only the commercial complex but also the approaching roads and external development of the project within 36 months of the booking. But to the utter surprise and shock of the complainants, vide clause 7 of the BBA, the respondents have provided that they will complete the project within 36 months from the start of the construction thereof. It is matter of record that all the permissions to initiate construction have been obtained by the respondent 30.07.2013 and accordingly the respondents were able to started the construction of the project from the very next day i.e. 31.07.2013 and 36 months completes on 30.07.2016. The grace period 180 days thereafter also completes on 30.01.2017. But till the filing of the present complaint the respondents have not completed the commercial project as assured and have completed 90% only that too after a delay of more than 105 months till the filing of the present complaint. The external development as well as approaching road is yet to be completed as without the completion thereof the very purpose of the commercial complex is defusing and there is no feet fall of the customers, as well as no purpose of huge investment is being served.
- n. That without obtaining any formal consent from the complainants or any other allottees, the respondents have inserted clause 18 wherein it has

been provided that the respondents shall be at liberty to avail finance, loan from any financial institution or bank by way of mortgage the on the subject project. However, at the time of booking the agents and officials concerned have assured that the respondents are companies of good repute and have sufficient funds to erect and complete the project including the approach roads and external development and the respondents shall transfer the titled of the unit so booked free from all encumbrances.

o. That vide clause 26 the respondents have without discussing with the complainants or obtaining any formal consent have inserted that the time is the essence for the complainants/allottees in regard to the payment of the installments of sale considerations while as no reciprocal provision have not been inserted in the whole BBA which imposes any penalty or burden on the respondents that the span of 36 months from the date of booking as assured at the time of the booking of the unit is also essence upon the respondents. It is matter of fact that the complainants have already paid in the inception almost all the sale consideration to the respondents while as the respondents have committed huge delay in delivery of the project/unit complete in all respect as assured by their agents and officials concerned.

p. That while clause 37 the respondents have inserted the provision of delay in completion as well as delivery of the possession in case of force majeure or any unforeseen circumstances beyond the control of the respondents. However, it is respectfully submitted since the booking till the filing of the present complaint no factum of force majeure or such circumstance had ever arose.

XI. That from the bare reading of the above terms and conditions of the BBA clearly shows that the terms and conditions of the BBA are not only unnecessary favouring the respondents but also are discriminative, one sided, biased from the stand point of the complainants and therefore, the whole BBA is voidable being unequal and lack of reciprocity.

XII. That upon receiving the said pre-printed, dotted, biased, one-sided BBA the complainants visited time and again the office of the respondent no.1 and met with the officials concerned to discuss and negotiate the terms which are unequal and without reciprocity. But to the utter shock and surprise of the complainants the officials of the respondent no.1 have stated to amend the terms of the BBA is not the policy of the respondents, the BBA is similar for all the allottees. You are free not to sign the said BBA and in such an event

the unit shall be cancels the earnest money as well as the commission paid to the broker shall be forfeited.

- XIII. That the earnest money is huge amount and under the threat of the officials of the respondent no.1, under force, the complainants have signed the pre-printed, dotted, one-sided BBA at the places already marked by the respondent no.1 and delivered the same to the respondent no.1 for the execution of the same.
- XIV. That at the time of booking the unit in question the agents and officials concerned of the respondent no.1 have assured the complainants that right from the booking and till the completion of the commercial project in all respect, the respondent shall make the payment of assured return at the rate of Rs.46,200/- per month. However, the respondent no.1 has breached the said promise and assurances and have paid till the three years only i.e. till June 2018. It is a matter of fact that till today the external development and approach road has not been completed by the respondents.
- XV. That as the respondents have not completed the commercial project as assured, the complainants are entitled to receive the assured return till the filing of the present complaint as well as the respondents are liable to pay the same.
- XVI. That since the respondent failed to fulfil its promise to deliver the project by 02/01/2022 and failed to pay the assured return the complainant is no more interested in the project and wants refund of his money invested in the above project along with interest @24% per annum from the date of payment till realization from respondent/opposite party.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- a) Declare that the BBA which is pre-printed, dotted is one sided, discriminating the complainants at the hands of the respondent companies and the same is not binding upon the complainants;

- b) Pass a direction in favor of the complainants and against the respondent companies thereby directing the respondent companies to, jointly and severally, refund the whole amount so paid by the complainants to the respondent companies as there is huge delay in completion of the commercial project and delivery of the unit duly complete in every respect including the external development and construction of the approach road;
- c) Pass direction in favor of the complainants and against the respondent companies to pay the interest at the prescribed rate that is 1% above the prime rate of State Bank of India from the date of each payment till the full and final payment of the whole amount as full and final payment;
- d) Pass a direction in favor of the complainants and against the respondent companies to pay, jointly and severally, the assured return at the rate of Rs.46,200/- to the complainants till the final disposal of the present complaint.

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 respondent no.1:

6. The respondent no.1 vide its reply has contested the complaint on the following grounds:
- i. That the present complaint is liable to be dismissed for misjoinder of parties. That the respondents no.2 and 3 are neither proper nor necessary parties. That the buyer's agreement was executed only between the respondent no.1 and the complainants and hence, the respondents no.2 and 3 are liable to be deleted from the array of parties. That the respondents no.2 to 3 are not proper and necessary parties as neither is there any allegation nor any liability of the respondents no.2 to 3, in the present complaint as the respondent no.1. It needs to be noted that the allotment letter has been issued by the respondent no.1, while the buyer's agreement is also executed between the complainant and the respondent no.1 only. The respondents no.2 to 3 are not even a party to the buyer's agreement. It

is a matter of record, as derived from the buyer's agreement executed between the parties that the respondent no.1 herein is the developer/promoter of the project, in so far as the complainant is concerned. The respondents no.2 to 3 had executed agreements and granted absolute development rights to the respondent no.1.

- ii. Thus, the respondents no.2 to 3 are liable to be deleted from the array of parties. Reference is hereby also drawn to the Judgment of the High Court of Kerala, in case titled, Pooja Constructions vs Secretary, Kerala Uranma Devaswom Board & Anr., reported in 2024 SCC Online Ker 4894, wherein the Hon'ble High Court upheld the decision of the Kerala Real Estate Regulatory Authority, holding the developer/ contractor as the sole promoter.
- iii. That the complainants have got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the duly executed buyer's agreement dated 17.12.2013, as shall be evident from the submissions made in the following paras of the present reply. The respondent craves leave of this Authority to refer and rely upon the terms and conditions set out in the buyer's agreement in detail at the time of hearing of the present complaint, so as to bring out mutual obligations and responsibilities of the respondent as well as the complainants.
- iv. That the complainants are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. It is submitted that the offer of possession of the unit was issued to the complainants as early as on 28.07.2018. It is matter of record that from the due date till the date of Offer of Possession, no request for refund was ever made. The request for refund has been made for the first time in the present

complaint, i.e. after more than 7 years of the issuance of the offer of possession. clearly, there is no fault or breach on the part of the respondent, more particularly, when the complainant continued to remain part of the project. In the absence of any breach on the part of the respondent, the complainant cannot be allowed to withdraw from the project at this advance stage. It is relevant to highlight and refer to the judgment of the Hon'ble Supreme Court in Ireo Grace Realtech Pvt. Ltd. Vs Abhishek Khanna & Ors, reported in MANU/SC/0013/2021, wherein, it has been held that *"where Phase 1 of the project had been issued the occupancy certificate after the completion of construction and the developer has offered the possession to the respective allottees, such allottees are obligated to take the possession of their respective units."*

- v. That the present complaint is barred by limitation. Clearly, the request for refund, after more than 7 years of Offer of Possession is neither genuine nor maintainable. That this Authority in the case of Ajay Malik Vs Emaar, Complaint No. 2518 of 2024, decided on 11.04.2025 has dismissed the complaint on exactly the similar facts being barred by limitation. Reference is also drawn to the judgment passed by the Authority, which has been upheld by the Hon'ble Appellate Tribunal in Mr. Shashi Kant Bhalla & Anr. Vs M/s Puri Constructions Pvt. Ltd., in Appeal No. 262 of 2023, decided on 14.02.2025.
- vi. It is also a matter of record that the complainants have also reaped the benefits of monthly income plan/ assured return scheme and received a sum of Rs.12,05,820/- each and in total Rs.24,11,640/-, as assured returns and have enjoyed the same over the years. That the respondent, in support of its contention for adjustment of the assured returns in the refund amount, relied upon the Judgment of this Authority in Kiran Vs AIPL in Complaint No. 3729 of 2021, "29...The Respondent is directed that out of

the amount to assessed, amount paid on account of assured return shall be deducted.". Without prejudice to the facts and circumstances, it is submitted that that the in case the Authority comes to a conclusion that the complainants are entitled to refund, then the amounts paid by the respondent to the complainants under the monthly income plan are liable to be adjusted from the refundable amounts plus interest on the said amounts.

- vii. That the complainants had approached the respondent and expressed an interest in booking a commercial unit in the commercial complex being developed by the respondent known as "Paras Square" situated in Sector 63-A, Gurgaon. Prior to making the booking, the complainants conducted extensive and independent enquiries with regard to the project and it was only after they were fully satisfied about all aspects of the project, they took an independent and informed decision, uninfluenced in any manner by the Respondent, to book the unit in question.
- viii. That thereafter the complainants vide an application form, applied to the respondent for provisional allotment of a unit in the project. The complainants, in pursuance of the aforesaid application form, was allotted an independent retail/ commercial unit bearing no FF-57, admeasuring super area of approximately 420 sq. ft., in the project vide allotment letter dated 30.08.2013. The respondent had no reason to suspect the bonafide of the complainants and proceeded to allot the unit in question in his favor. The complainants further undertook to be bound by the terms and conditions of the application form/allotment letter.
- ix. That thereafter, buyer's agreement dated 17.12.2013 was executed between the complainants and the respondent. It needs to be noted that at the time of the execution of the Buyer's Agreement, the complainants did not raise any objection to the terms and conditions contained therein. It is

also a matter of record that even till the filing of the present complaint, no allegations or grievances or objections were ever raised against the terms and conditions of the Buyer's Agreement. The allegations against the buyer's agreement have been raised for the first time in the present complaint, after more than 13 years of the execution of the buyer's agreement.

- x. That the complainants were irregular in payment of instalments. The respondent was constrained to issue reminders and letters to them requesting them to make payment of demanded amounts. Payment request letters and reminders were sent to the complainants by the respondent clearly mentioning the amount that was outstanding and the due date for remittance of the respective amounts as per the schedule of payments, requesting the complainants to timely discharge their outstanding financial liability but to no avail. The respondent has issued numerous letters, reminders, final notices and pre-cancellation letter, but to no avail. Thus, it is clear that there is breach on the part of the complainants and the respondent is entitled to forfeit the amounts paid by the complainants.
- xi. That the complainants are not "allottees" but are investors who have booked the unit in question as a speculative investment in order to earn rental income/profit from its resale. The unit in question has been booked by the complainants as a speculative investment and not for the purpose of self-use as their residence. Therefore, no equity lies in favour of the complainants.
- xii. That even after sending the payment requests letters to the complainants, the complainants gave no heed to the said letters. The complainants consciously and maliciously chose to ignore the letters issued by the respondent and flouted in making timely payments of the instalments which was an essential, crucial and an indispensable requirement under the

buyer's agreement. Furthermore, when the proposed allottees, such as the complainants, default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially and further causes enormous business losses to the respondent. The complainants chose to ignore all these aspects and wilfully defaulted in making timely payments. That the respondent despite defaults of several allottees earnestly fulfilled its obligations under the buyer's agreement and completed the project as expeditiously as possible in the facts and circumstances of the case. Therefore, there is no equity in favour of the complainants.

xiii. That the rights and obligations of the complainants as well as the respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement which continues to be binding upon the parties thereto with full force and effect. Clause 7 of the buyer's agreement provides that subject to force majeure and the allottees having complied with all the terms and conditions of the buyer's agreement, and not being in default of the same, possession of the unit would be handed over within 36 months from the date of start of the construction, i.e. by 25.03.2014.

xiv. That despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. The respondent had applied for occupation certificate on 11.05.2018. Occupation Certificate was thereafter issued by the concerned statutory authority in favour of the respondent dated 23.07.2018. It is pertinent to note that once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, the respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the

prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. As far as the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case.

- xv. That the respondent, from time to time has continued to pay the monthly income to the complainants, in terms of the monthly income plan. The complainants have duly reaped benefit of such payments and are now trying to take advantage and seek cancellation and refund of the paid amounts.
- xvi. That the construction of the project/allotted unit in question already stands completed and the respondent has already offered possession of the unit in question to the complainants vide offer of possession dated 28.07.2018. The complainants have neither paid their dues, nor taken the possession of the unit.
- xvii. The complainants have preferred the instant complaint in complete contravention of their earlier representations and documents executed by them. The complainants have filed the instant false and frivolous complaint in order to mount undue pressure upon respondent in order to make it succumb to their unjust and illegitimate demands.
- xviii. That several allottees, including the complainants, have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the

respondent. The respondent, despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. That the construction of the unit in question is complete and the respondent has already offered possession of the unit in question to the complainants. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favour of the complainants. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainants are totally baseless. Thus, the present complaint deserves to be dismissed at the very threshold.

- xix. Without prejudice to the aforesaid preliminary objections and the contention of the respondent that unless the question of maintainability is first decided, the respondent ought not to be called upon to file the reply on merits to the complaint, this reply is being filed by way of abundant caution, with liberty to file such further reply as may be necessary, in case the complaint is held to be maintainable.
- xx. 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. All other averments made in the complaint are denied in toto.
8. 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 those undisputed documents and submissions made by the parties.

E. Reply by respondent no.2 and 3:

9. The respondent no.2 and 3 through their application for dismissal of the present complaint have contested the complaint on following grounds:

- i. That at the time of preparing reply on behalf of respondents no. 2 and 3, while going through the present baseless, false and frivolous complaint, it has transpired that the complaint has been filed by two complainants namely, Vinod Kumar and Manoj Kumar *but the complaint bears signature of complainant no. 2 i.e. Manoj Kumar only. No affidavit also of complainant no.1 Vinod Kumar has been attached with the complaint.*

The complaint as filed by *the complainants is totally defective, not maintainable and liable to be dismissed outrightly* without going into any other issues and wasting the precious time of this Authority and all concerned. It was the duty of the complainants to have filed the present complaint as per law. The present application is without prejudice to the other rights and remedies of respondents no. 2 & 3 and respondents no. 2 & 3 reserve their right to file reply to the complaint and/or any other application(s).

- ii. It is, therefore, humbly prayed that the complaint being defective may kindly be dismissed outrightly.

F. Jurisdiction of the Authority:

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

F.I Territorial jurisdiction

11. 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.

F. II Subject matter jurisdiction

12. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee's 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.

13. So, in view of the provisions of the Act quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
14. Further, the Authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or



directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

15. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.
- G. Findings on the relief sought by the complainants.**
- G.I** Declare that the BBA which is pre-printed, dotted is one sided, discriminating the complainants at the hands of the respondent companies and the same is not binding upon the complainants;
- G.II** Pass a direction in favor of the complainants and against the respondent companies thereby directing the respondent companies to. jointly and severally, refund the whole amount so paid by the complainants to the respondent companies as there is huge delay in completion of the commercial project and delivery of the unit duly complete in every respect including the external development and construction of the approach road;
- G.III** Pass direction in favor of the complainants and against the respondent companies to pay the interest at the prescribed rate that is 1% above the prime rate of State Bank of India from the date of each payment till the full and final payment of the whole amount as full and final payment;
- G.IV** Pass a direction in favor of the complainants and against the respondent companies to pay, jointly and severally, the assured return at the rate of Rs.46,200/- to the complainants till the final disposal of the present complaint.
16. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest from the date of payment until realization under Section 18(1) of the Act. Section 18(1) of the Act is reproduced below for ready reference:

"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. -

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: 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."

17. **Due date of handing over possession:** Clause 7 (a) (i) & (ii) of the buyer's agreement dated 17.12.2013 provides time period for handing over of possession and is reproduced below:

7 Date of Completion.

(a) Time of handing over the Possession

(i) The date of completion of the Project shall be Thirty-Six (36) months from the start of construction hereof, subject to force majeure or/and any other reason beyond the control of Developer, subject to all Allottee(s) having strictly complied with all the terms and conditions of this Buyer's Agreement and not being in default under any provisions of the same and all amounts due and payable by the Allottee(s) under this Buyer's Agreement having been paid in time to the Developer, The Developer immediately upon the receipt of OC/CC, shall give notice to the Allottee(s), in writing, to take possession of the Unit for his/its fit-outs and occupation and use ("Notice of Possession"), on furnishing certain documents by the Allottee(s).

(ii) The Allottee(s) agrees and understands that the Developer shall be entitled to a grace period of one hundred and Eighty (180) days over and above the period more particularly specified here-in-above in sub-clause (a)(i) of clause 7, for completion of the Project.

(Emphasis supplied)

18. As per clause 7 (a) (i) & (ii) of the buyer's agreement dated 17.12.2013, the respondent/promoter undertook to handover possession of the unit to the complainants within 36 months from the date of start of construction, with an extension of 180 days. The respondent/ promoter got the consent for clearance from the pollution control board on 25.03.2014. Thus, the due date

of possession comes out to be 25.09.2017 (inclusive of grace period of 180 days).

19. **Admissibility of refund:** In the present complaint, the complainants intend to withdraw from the project and are seeking refund of the amount of the amount paid along with interest. The Authority observes that the occupation certificate for the said project has already been obtained by the respondent from the competent authority on 23.07.2018. However, the complainants have filed the present complaint seeking refund under Section 18 of the Act on 01.12.2025. There has been such a long unexplained delay in pursuing the matter. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of consumers. However, this cannot be fetched to an extent that basic principles of jurisprudence are ignored. The procedure of law cannot be allowed to be misused by the litigants. It is a principle of natural justice that nobody's right should be prejudiced for the sake of other's right, when a person remained dormant for such an unreasonable period of time without any just cause. The Authority is of view that although the law of limitation does not strictly apply to the Act of 2016. However, the Authority under Section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim that "*the law assists those who are vigilant, not those who sleep over their rights*". Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances. Therefore, considering the above, it is determined that the present complaint has not been filed within a reasonable time period.
20. The Authority further observes that Section 18(1) is applicable only in the eventuality where the promoter fails to complete or unable to give possession

of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein. This is a case where the promoter has already offered possession of the subject unit after obtained occupation certificate from the competent authority on 23.07.2018. The complainants/ allottee(s) have approached the Authority seeking withdrawal from project after a passage of more than 7 years from date of obtaining occupation certificate and never before.

21. In the instant case, there is a delay in handing over the possession by the respondent as the due date of possession was 25.09.2017, whereas the offer of possession was made in terms of the BBA on 28.07.2018, after obtaining the occupation/completion certificate on 23.07.2018 and thus, becomes a case to grant delay possession charges. The Authority observes that interest of every month of delay at the prescribed rate of interest could be granted to the complainant/allottee in terms of Section 18(1) of the Act, 2016, had he wished to continue in the project. However, the complainants wish to withdraw from the project and has sought refund of the paid-up amount along with interest vide present complaint dated 01.12.2025.
22. The right under Section 18(1)/19(4) of the Act, 2016 accrues to the allottee on failure of the promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. If allottee has not exercised the right to withdraw from the project after the due date of possession is over, till the receipt of occupation certificate, it can be inferred that the allottee has tacitly consented to continue with the project. The promoter has already invested in the project to complete it and has offered possession of the allotted unit. Now, when unit is ready for possession, such withdrawal on considerations other than delay such as reduction in the market value of the property and investment purely on speculative basis will not be in the spirit of the Section 18 of the Act.

Moreover, Section 19(10) of the Act obligates the allottee to take possession of the unit within a period of two months from the date of issuance of occupation certificate.

23. This view is supported by the judgement of Hon'ble Supreme Court of India in case of **Ireo Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors. (Civil appeal no. 5785 of 2019)**, wherein the Hon'ble Apex court took a view that those allottees are obligated to take the possession of the apartments since the construction was completed and possession was offered after issuance of occupation certificate. Relevant para of the said order is reproduced under for ready reference:

"(i) We are of the view that allottees at Serial Nos. 1 and 2 in Chart A are obligated to take possession of the apartments, since the construction was completed, and possession offered on 28.06.2019, after the issuance of Occupation Certificate on 31.05.2019. The Developer is however obligated to pay Delay Compensation for the period of delay which has occurred from 27.11.2018 till the date of offer of possession was made to the allottees."

24. In view of the above, no case for refund under Section 18(1) of the Act, 2016 is made out and the present complaint stands dismissed being not maintainable.
25. File be consigned to the registry.


(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.07.2026