

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

Complaint no.: 1525 of 2023
Date of first hearing: 14.03.2024
Date of order: 16.01.2025

1. Shashi Vats
2. Hiten Vats

Complainants

R/o: - House No. 826, Sector-31, Gurgaon-122001

Versus

M/s Imperia Structures Limited.

Respondent

Regd. office at: A-25, Mohan Cooperative Industrial Estate, Mathura Road, New Delhi-110044

Corporate office at: Plot No. 14, Ground Floor, Sector-44, Institutional Area, Gurugram- 122003 Haryana

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Hiten Vats (Complainant no. 2 in person)

Sh. Geetansh Nagpal (Advocate)

Complainants
Respondent

ORDER

1. This complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. No.	Particulars	Details
1.	Name and location of the project	"MINDSPACE" at sector-62, Golf Course Extn. Road, Gurgaon.
2.	Project area	8.36 acres
3.	Nature of Project	IT Park Colony
4.	DTCP license no. and validity status	86 of 2010 dated 23.10.2010 valid up to 22.10.2020
5.	Name of Licensee	Baakir Real Estates Private Limited
6.	RERA registered/ not registered and validity status	Registered 240 of 2017 dated 25.09.2017 valid up to 31.12.2020 (Lapsed Project)
7.	Unit No.	6056, 6 th floor, Tower-A, Virtual IT Space (As per page no. 31 of the complaint)
8.	Unit area admeasuring	570.08 sq. ft. (super area) (As per page no. 31 of the complaint)
9.	Application form/ welcome letter	05.08.2016 (As per page no. 18 of the complaint)
10.	Space allotment letter	22.08.2016 (As per page no. 20 of the complaint)
11.	Date of buyer's agreement	21.09.2016 (As per page no. 26 of the complaint)
12.	Possession clause	12. Handing over possession: That the allottee shall be handed over possession of the unit from the company only after the allottee has fully discharges all his obligations and entire total price (including interest due, if any, thereon) against the unit has been paid and all other applicable charges/dues/taxes of the allottee have been paid and conveyance deed has been executed and registered in his favour. The company shall hand over possession of the unit to the allottee is not in default of any of the terms and conditions of this agreement and has complied with all provisions,

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		<i>formalities, documentation, etc. as may be prescribed by the company in this regard. (As per page no. 37 of the complaint)</i>
13.	Due date of possession	No date is given as virtual space has been allotted and assured return as well as commitment charges are to be made.
14.	Assured return clause	33. Assured Return <i>"Where the allottee has opted for payment plan as Annexure-A attached herewith and accordingly, the company has been paying/agreed to pay Rs.36,554/- per months by way of assured return to the allottee from 20.09.2016 till the date of possession of the unit. The return shall be inclusive of all taxes whatsoever payable or due on the return.</i> 34. Leasing Arrangement: <i>"A. (a) the company will pay to the allottee Rs.33,065/- per month as committed return for upto three years from the date of notice of offer of possession of the unit or till the same is put on lease, whichever is earlier..." (Emphasis Supplied)</i>
15.	Basic Sale Consideration	Rs.15,95,084/- (As per page no. 31 of the complaint)
16.	Amount paid by complainants	Rs.15,95,084/- (As per page no. 54 of the complaint)
17.	Offer of possession	23.08.2019 for fit-out (As per page no. 13 of the reply)
18.	Occupation certificate	28.11.2019 (for tower-A) (As per details available at Official site of DTCP, Haryana) (Inadvertently mentioned as 02.06.2020 in the proceedings of the day dated 10.10.2024)

B. Facts of the complaint:

3. The complainants have made the following submissions:

- I. That the complainants jointly purchased a commercial virtual office space i.e., unit no. IMP-MS-0031 admeasuring 570.08 sq. ft. in the

project "Imperia Mindspace", situated in sector-62, Gurugram. The complainants purchased the unit on down payment plan owned and constructed by builder and paid the entire consideration in advance as the property was purchased in "Assured Return" scheme as advertised and promised to the complainants.

- II. That post paying the said payments, the complainants were being assured that the project would be completed and handed over in a timely manner and as per provisions of the builder buyer's agreement and in line with the advertisements and promotion of the project and as per clause 33 of the builder buyer's agreement, the respondent was supposed to pay assured return of Rs.32,898/- per month till the time of possession of the property and post that the respondent was supposed to pay monthly committed return @ Rs.33,065/- as per clause 34(A)(a) of the builder buyer's agreement for next 3 years, starting from the date of valid offer of possession.
- III. That for the first few years the respondent paid the above said return on monthly basis as per their commitment. But since March, 2018 the respondent started creating problems in paying the monthly assured return amount and paid the said amount after several reminders only and stopped paying the assured return amount since 01.01.2019. Whenever the complainants use to call the CRM team of the respondent, the complainants never got any response on the aforementioned payments and after few months, they even stopped responding to the calls and emails of the complainants.
- IV. That in the month of July, 2019, the complainants received an email wherein the respondent conveyed that they have received the fire



occupation certificate and thus they can offer the possession but on enquiry, the complainants came to know that the builder has not received the occupation certificate and it was just a partial OC on the basis of which the respondent raised "demand on offer of possession". It is an established law that till the time the OC is obtained the respondent cannot raise any demand in lieu of offer of possession.

- V. That the above mentioned facts were communicated to the respondent vide email dated 23.08.2019 wherein the complainants clearly conveyed that as per the terms of builder buyer's agreement executed between the parties, the respondent will give offer of possession only on receipt of occupational certificate and thus to validate that offer of possession the complainants requested the builder to provide them with the copy of OC but none is provided till date.
- VI. That the complainants never received any revert on the complainants email dated 23.08.2019, therefore, the complainants again wrote an email to Mr. Harpreet Batra on 29.08.2019 and a reminder on 09.09.2019, wherein the complainants conveyed that the act of raising the demand on offer of possession without obtaining the OC is wrong and illegal and thus is not maintainable and is not acceptable to the complainants, but even those emails were of no use.
- VII. That since the project of the respondent/builder is failed and the respondent-builder is not paying the assured return as well as the monthly commitment charges (after possession of OC) despite the respondent collected entire consideration from the complainants



regarding the said property and thereby the respondent had made wrongful loss to the complainants and wrongful gain to himself.

- VIII. That the complainants being aggrieved by the illegal and unlawful acts of the respondent, the complainants visited the respondent's office on 11.09.2019 and met their CRM head Mr. Vipin Gupta and Ms. Rina and requested them to show the copy of OC but they refused bluntly and to the utter shock of the complainants, the respondent conveyed their one-sided decision, without discussing with the complainants, that the pending amount payable by the complainants to the respondent on completion of the project would be adjusted from the pending assured return amount payable by the respondent to the complainants.
- IX. That the complainants have invested their lifetime savings in this project and thus monthly assured return and subsequently the monthly commitment charges is the biggest source of income for the complainants. The complainant, Mrs. Shashi Vats is a senior citizen and a widow survived by her son and the complainants have put all their hard earned money in this project on the assurance from the respondent that they will keep on getting monthly returns as this monthly return is a major source of their household income and without this income it is very difficult for the complainants to run daily household expense.
- X. That to the agony and frustration of the complainants, the respondent has started sending maintenance bills to the complainants wherein the respondent is yet to pay huge sum to the complainants.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s):

- i. Direct the respondent to clear all the pending dues of assured return w.e.f. 1st January, 2019 till date of receipt of occupation certificate.
- ii. Direct the respondent to pay the monthly commitment charges from the date of receipt of the OC till completion of 3 years from such date of receipt of OC.
- iii. Direct the respondent to pay interest @18% p.a. on the entire due amount.
- iv. Direct the respondent to submit the final OC received from the competent authority.
- v. Direct the respondent not to charge any maintenance charges till the completion of 3 years of the monthly commitment charges payable under clause 34 of the buyer's agreement.

D. Reply by the respondent:

5. The respondent has contested the complaint on the following grounds:
 - i. That the complaint is prima facie not maintainable and must be dismissed for being vexatious to law.
 - ii. That the respondent has already completed the construction, procured occupation certificate and has started giving out physical possession of the said project. This is a mere attempt on behalf of the complainants to harass the respondent and to extort money from them.
 - iii. That the construction of the said project was completed way back in 2019 and the occupancy certificate has been received on 02.06.2020. The respondent company has time and again issued offers of possession and demand notices to the complainants. An offer of possession for fit-out was issued on 23.08.2019 by the

respondent to the complainants at the time of anticipation of the occupancy certificate.

- iv. That the complainants are investors, who made investment in the project of the respondent. Accordingly, all parties had executed MoU. The complainants had purchased the said unit for a total sale consideration with tax of Rs.20,89,692/-, along with charges of reserved car parking and other charges shall be paid by the complainants at the time of handing over of possession of the unit.
- v. That the complainants have not revealed the fact that he had delayed and defaulted in making payment towards the unit, time and again, and the same left the respondent with no choice but to issue a letter for cancellation of the unit. However, despite the inordinate delays and defaults on behalf of the respondent, the respondent company reinstate the allotment of the complainants and issued them offer of possession for fit-out.
- vi. That the respondent company directs all the payments received from the allottees, towards the construction of the undertaken project and thus, default in depositing the payment by the allottees disrupts the construction speed and hinders the completion of the committed project, which eventually affects the delivery of the project to allottees. It is also necessary to bring in notice that despite of several hindrances and certain force majeure, such as recent COVID-19 pandemic, the respondent company has successfully procured the occupancy certificate dated 02.06.2020, which exhibits the bona fide intention of the respondent to complete the project.
- vii. That the complainants were aware that there might be unforeseen and untoward incidents or circumstances, being beyond the control

of the respondent company, which will cause hindrances in the timely completion of construction of the project and hence, had duly consented to the terms and conditions of force majeure in the agreement.

- viii. That owing to unprecedented air pollution levels in Delhi NCR, the Hon'ble Supreme Court issued a ban on construction activities in the region from 04.11.2019 onwards, which was a blow to realty developers in the city. The Air Quality Index at the time was running above 900, which is considered severely unsafe for the city dwellers. In pursuance to the Central Pollution Control Board (CPCB) declaring the AQI levels as not severe, the SC lifted the ban conditionally on 09.12.2019, allowing construction activities to be carried out between 6 a.m. and 6 p.m., and the complete ban was lifted by the Hon'ble Supreme Court on 14.02.2020.
- ix. The clause 57 of the said MOU states that if the dispute or difference shall arise between the parties, the same shall be referred for arbitration proceedings. The said clause 27 has been reproduced below:
- "That in case of any dispute or difference between the parties in respect of this MOU, the same shall be referred for arbitration to be conducted by the Sole Arbitrator to be appointed by the chairman cum Managing Director of the Developer in accordance with the Arbitration and Conciliation Act, 1996. The seat of arbitral proceedings shall be New Delhi."*
- x. That it is the complainants who are at default as the complainants dishonoured the terms of BBA dated 21.09.2016 and failed to pay the demands of respondent within time. The complainants failed to make the payment as demanded vide offer of fit-out possession dated 15.07.2019 and 23.08.2019 and on offer of possession a lumpsum of Rs.4,22,828/- is still pending to be paid by the complainants towards the consideration of the said unit.



- xi. That the respondent has duly honoured its part of the obligations without any delay, however, the complainants attempting to extort the respondent to earn unreasonable profit and commercial gain at the cost of the respondent. No cause of action has arisen in favour of the complainants to file this present complaint.
6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the complainant.

E. Jurisdiction of the Authority:

7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial Jurisdiction

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

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.

8. 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 objections raised by the respondent:**F.I Objection regarding regarding the circumstances being 'force majeure':**

9. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as COVID-19 outbreak, certain environment restrictions, weather conditions in NCR region and non-payment of instalment by different allottees of the project, 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. The events taking place such as restriction on construction due to weather conditions were for a shorter period of time and are yearly one and do not impact on the project being developed by the respondent. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

F.II Objection regarding agreements contains an arbitration clause which refers to the dispute resolution system mentioned in agreement.

10. The buyer's agreement executed between the parties dated 21.09.2016 contains a clause 57 relating to dispute resolution between the parties. The clause reads as under:

57.

"All or any disputes arising out or touching upon or in relation to the terms of this Agreement or its termination including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled through amicably by mutual discussions, failing which the same shall be settled through reference to a sole arbitrator to be appointed mutually, whose decision shall be final and binding upon the parties. The allottee hereby confirms that it shall have no objection to the appointment of such sole arbitrator and the allottee hereby accepts and agrees that this shall not constitute a ground for challenge to the independence or impartiality of the said sole arbitrator to conduct the arbitration. The arbitration shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments / modifications thereto and shall be held at the Company's offices or at a location designated by the said sole arbitrator in Delhi. The language of the arbitration proceedings and the award shall be in English. The Award of the sole arbitrator shall be final and binding on the parties. Both the parties will share the fees of the arbitrator in equal proportion.

(Emphasis Supplied)

11. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in **National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506**, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not

in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Therefore, by applying same analogy the presence of arbitration clause could not be construed to take away the jurisdiction of the authority.

12. Further, in *Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017*, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builders could not circumscribe the jurisdiction of a consumer.
13. Therefore, in view of the above judgements and considering the provision of the Act, the authority is of the view that complainants are well within their right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

G. Findings on the relief sought by the complainants:

G.1 Direct the respondent to pay the pending assured return w.e.f. 1st January 2019 till the date of receipt of occupation certificate.

14. The complainants are seeking unpaid assured returns on monthly basis as per the buyer's agreement dated 21.09.2016 at the rates mentioned therein. It is pleaded by the complainant that the respondent has not complied with the terms and conditions of the said MoU. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same. In **Gaurav Kaushik and anr. Vs. Vatika Ltd.** the authority has held that when the payment of assured returns is part and parcel of memorandum of understanding or buyer's

agreement (maybe there is a clause in that document or by way of addendum or terms and conditions of the allotment of a unit), then the promoter is liable to pay that amount as agreed upon.

15. A buyer's agreement was executed between the complainant and the respondent on 21.09.2016 by which a specific unit bearing no. 6056 (virtual space) has been allotted to the complainants for sale consideration of Rs.15,95,084/-. Although, there is no specific due date for handing over of possession is given in the buyer's agreement but as per clause 33 of the buyer's agreement, the respondent has promised an amount of Rs.36,554/- on monthly basis in the form of assured return from 20.09.2016 till the offer of possession. The definition of "allottee" as per section 2(d) of the Act of 2016 provides that an allottee includes a person to whom a plot, apartment or building has been allotted, sold or otherwise transferred by the promoter. Section 2(d) of the Act of 2016 has been reproduced for ready reference:

2(d)

"allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

Keeping in view the above-mentioned facts and the definition of allottee as per Act of 2016, it can be said that the complainants are allottees.

16. The money was taken by the promoter 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 promoter promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.



17. The promoter is liable to pay that amount as agreed upon. Moreover, an agreement/MoU defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the said agreement.

18. In the present complaint, the assured return was payable as per clause 33 of buyer's agreement, which is reproduced below for the ready reference:

33. Assured Return

"Where the allottee has opted for payment plan as Annexure-A attached herewith and accordingly, the company has been paying/agreed to pay Rs.36,554/- per months by way of assured return to the allottee from 20.09.2016 till the date of possession of the unit. The return shall be inclusive of all taxes whatsoever payable or due on the return.

Thus, the assured return was payable @ Rs.36,554/- per month w.e.f. 20.09.2016, till the possession of the said unit is offered to the complainants.

19. In light of the reasons mentioned above, the authority is of the view that as per buyer's agreement dated 21.09.2016, it was obligation on the part of the respondent to pay the assured return. It is necessary to mention here that the respondent has failed to fulfil its obligation as agreed inter se both the parties in buyer's agreement dated 21.09.2016. Accordingly, in the interest of natural justice, the liability of the respondent to pay assured return as per buyer's agreement is still continuing. The respondent has paid assured return to the complainant till December, 2018. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return in terms of clause 33 of buyer's agreement dated 21.09.2016 at the agreed rate i.e., @ Rs.36,554/-per month from the date the payment of assured return has not been paid i.e., January 2019 till date of receipt of occupation certificate i.e., 28.11.2019.

G.II Direct the respondent to pay the monthly commitment charges from the date of receipt of the OC till completion of 3 years from such date of receipt of OC.

20. In the present matter the complainants were allotted a unit on 22.08.2016 bearing no. 6056, 6th floor, Tower-A(Virtual Space) in the project namely Mindspace located in sector 62, Gurugram. The buyer's agreement was executed on 21.09.2016 and the complainants started paid the whole amount of sale consideration i.e., ₹15,95,084/-. As per clause 34 of the agreement dated 21.09.2016 it was promised and assured to the complainants if unit is a retail unit and an amount of Rs.33,065/- per month will be paid as committed return. The relevant portion of clause 34 of buyer's agreement has been reproduced below for the ready reference:

34. Leasing Arrangement:

"A. (a) the company will pay to the allottee Rs.33,065/- per month as committed return for upto three years from the date of notice of offer of possession of the unit or till the same is put on lease, whichever is earlier..."

21. Further as per section 11(4)(a) of the Act of 2016, the promoter is responsible for all obligations and responsibilities as per the provisions of the Act or the terms agreed as per agreement for sale. The relevant portion of section 11(4)(a) is reproduced below:

(4) The promoter shall

(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 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:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

22. In the present case, the respondent has made offer of possession for fit out on 23.08.2019 but the occupation certificate of the tower in which the unit of the complainants is situated was received on 28.11.2019.

Thereafter, offer of possession made on 23.08.2019 is not a valid offer of possession and no valid offer of possession has been made after obtaining of occupation certificate. Neither any document is placed on record nor any submission has been made by either party regarding leasing of the unit, therefore, the complainants are entitled for committed returns up to 3 years from the date of occupation certificate i.e., 28.11.2019.

G.III Direct the respondent to pay interest @18% p.a. on the entire due amount.

23. Admissibility of delay possession interest at the prescribed rate:

The complainants are seeking interest on entire due amount however, 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. 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]

(1) 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.

24. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

25. 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

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date i.e., 16.01.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

26. 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;"*
27. The authority further observes that now, the proposition before the Authority whether an allottee who is getting/entitled for assured return even after expiry of the due date of possession, is entitled to both the assured return as well as delayed possession interest?
28. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottee on account of a provision in a MoU or in the BBA or an addendum to the MoU/BBA or allotment letter. The assured return in this case is payable from the date i.e., 20.09.2016 till offer of possession is made to the complainants-allottees. If we compare the assured return i.e., Rs.36,554/- per month with delayed possession charges i.e., Rs.14,754/- approximately payable under proviso to section 18 (1) of the Act of 2016, the assured return is much higher. By way of assured returns, the promoter has assured the allottee that they will be entitled for this specific amount till handing over of possession. Accordingly, the interest of the allottee is protected even

after the due date of possession is over as the assured return are payable till offer of possession. The purpose of delayed possession interest after due date of possession is over and payment of assured return after due date of possession is over are the same and safeguard the interest of the allottee as their money is continued to be used by the promoter even after the promised due date and in return, they are paid either the assured return or delayed possession interest, whichever is higher.

29. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delayed possession interest under section 18 and assured return is payable even after due date of possession till the handing over of possession of the said unit. The allottee shall be entitled to assured return or delayed possession interest, whichever is higher without prejudice to any other remedy including compensation. In the present case, the assured return was payable till offer of possession of the unit. The project is considered habitable or fit for occupation only after the grant of occupation certificate by the competent authority.
30. The Authority would express its views regarding the concept of a "valid offer of possession". It is necessary to clarify this concept because, after a valid and lawful offer of possession, the liability of the promoter for the delayed offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, the liability of the promoter continues till a valid offer is made and the allottee remains entitled to receive interest for the delay caused in handing over of possession. The Authority after a detailed consideration of the matter has concluded that a valid offer of possession must have the following components:



- a. *The possession must be offered after obtaining an occupation certificate/completion certificate.*
- b. *The subject unit must be in a habitable condition.*
- c. *Possession should not be accompanied by unreasonable additional demands.*

31. In the present case, the essential condition for a valid offer of possession has not been met. The occupation certificate for the project in which the subject unit is located was issued by the competent authority on 28.11.2019. However, the respondent had offered possession for the fit-out of the allotted unit prior to obtaining this certificate, specifically on 23.08.2019. Consequently, this offer does not constitute a valid offer of possession. The complainants have mentioned in the facts of the complaint that the respondent has paid assured return till December, 2018 but stopped paying the same from 01.01.2019 and the relief sought by the complainants regarding assured return is from 01.01.2019 till date of receipt of occupation certificate.

32. Hence, the authority directs the respondent/promoter to pay assured return to the complainants at the rate of Rs.36,554/- per month from the date when the payment of the assured returns has not been paid i.e., 01.01.2019 till date of receipt of occupation certificate.

G.IV Direct the respondent not to charge any maintenance charges till the completion of 3 years of the monthly commitment charges payable under clause 34 of the buyer's agreement.

33. In the present case, the unit allotted to the complainant is virtual space and there is no clause for handing over of physical possession of the unit. The complainant is seeking the committed returns for leasing of the unit as per clause 34(A)(a) of the unit buyer's agreement dated 21.09.2016. As per clause 34(A)(k) of the buyer's agreement the maintenance charges are to be paid by the lessee during the period of

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the lease to the company and in the case of non-payment or delayed payment of such charges by the lessee, the ultimate responsibility of the payment of the same shall be that of the allottee. The relevant portion of the clause 34(A)(k) of the buyer's agreement is reproduced below for ready reference:

"34(A)(k)

The lease document will stipulate payment of maintenance and other charges by the lessee(s) during the period of the lease(s) to the Company/Maintenance Agency. However, in the event of non-payment or delayed payment of such charges by the lessee(s), the ultimate responsibility of the payment of the same shall be that of the allottee and the company reserves the right to adjust the same from the rent to be remitted to the allottee."

34. The committed returns for the leasing arrangement as per clause 34(A)(a) of the agreement has not been paid to the complainants till date. Since physical possession of the unit is not yet handed over neither offered for physical possession being a virtual space and it is the obligation of the respondent to put the said unit on lease which is yet to be leased out. Accordingly, the maintenance charges shall be payable by lessee once the said unit is put on lease by the respondent and only in eventuality of its non-payment or delayed payment, the complainants-allottee is liable to pay the same on terms of the afore-mentioned agreement.

H. Directions of the authority:

35. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- The respondent is directed to pay the assured return at the rate i.e., Rs.36,554/- per month as per agreed terms of buyer's agreement per month from the date the payment of assured return has not been



- paid i.e., January 2019 till date of receipt of occupation certificate i.e., 28.11.2019.
- ii. The respondent is directed to pay arrears of accrued assured return as per buyer's agreement dated 21.09.2016 till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @9.10% p.a. till the date of actual realization.
 - iii. The respondent is directed to pay the committed returns to the complainants at Rs.33,065/- per month for a period of three years from the date of obtaining occupation certificate i.e., 28.11.2019.
 - iv. The respondent is directed to provide a copy of occupation certificate to the complainants/allottees.
 - 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.
36. Complaint stands disposed of.
37. File be consigned to registry.

Dated: 16.01.2025


(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram