



**HARERA
GURUGRAM**

Complaint No. 4163 of 2024

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

Complaint no. : 4136 of 2024
Date of complaint : 05.09.2024
Date of order : 30.07.2025

Amrawati Devi,
R/o: - 230-H, Gayatri Nagar, Sector-5,
Lucknow, Uttar Pradesh-226010.

Complainant

Versus

M/s Imperia Structures Limited.
Having Regd. Office At: A-25, Mohan Cooperative
Industrial Estate, Mathura Road, New Delhi-110044.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Sunil Kumar (Advocate)
Shubham Mishra (Advocate)

Complainant
Respondent

ORDER

1. This complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"Mindspace", Sector 52, Gurugram
2.	Project area	8.36 acres
3.	Nature of the project	IT Park/Cyber Park
4.	DTCP license no. and validity status	86 of 2010 dated 23.10.2010 valid upto-22.10.2020
5.	Name of licensee	Baakir Real Estate Pvt Ltd and 2 others
6.	RERA Registered/ not registered	240 of 2017 dated 25.09.2017 for 2.2 acres
7.	RERA registration valid up to	31.12.2020
8.	Virtual Office Space bearing no.	24, 6 th Floor, Tower-A (Page no. 38 of the complaint)
9.	Unit area admeasuring	500 sq. ft. (super area) (Page no. 38 of the complaint)
10.	Date of execution of agreement to sell	08.09.2016 (Page no. 36 of the complaint)
11.	Possession clause	46. Force Majeure <i>The compliance of the terms and conditions of this Agreement and the Project by the Company shall be subject at all times to "Force Majeure" conditions as defined below: -.... Subject to the aforesaid and subject to the Allottee not being in default under any part of this Agreement including but not limited to the timely payment of the Total Price and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company endeavours to hand over the possession of the Unit to the Allottee within a period of 48 (forty eight) months, with a further grace period of 6 (six months, from the date of commencement of construction of the Project, which shall mean the date of commencement of the excavation work</i>



		at the Project Land and this date shall be duly communicated to the Allottee."
12.	Date of commencement of construction	Not provided
13.	Due date of possession	08.09.2019 [Calculated as per Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018] {inadvertently vide proceedings dated 02.07.2025, grace period on account of covid-19 was added while calculating due date of possession}
14.	Lease Rental Clause	34. Leasing Arrangement: (a) The company will pay to the allottee Rs.29,000/- 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..." (e) "The Company expects to lease out the Unit (individually or in combination with other adjoining units) at a minimum lease rental of Rs.58/- per sq. ft. super area per month for the first term (of whatever period). If on account of any reason, the lease rent achieved in respect of the first term of the lease is less than the aforesaid Rs.58/- per sq.ft. super area per month, then the Company shall pay to the Allottee a one time compensation calculated at the rate of @Rs.120/- (rupees one hundred twenty only) per sq. ft super area for every one rupee drop in the lease rental below Rs.58/- (rupees fifty eight only) per sq.ft. super area per month. This provision shall not apply in/case of/second and subsequent leases/lease terms of the Unit." (f) "However, if the lease rental in respect of the aforesaid first term of the lease exceeds the aforesaid minimum

		<i>lease rental of Rs.58/- per sq.ft. super area, then, the Allottee shall pay to the Company additional basic sale price calculated at Rs.60/- (rupees sixty only) per sq. ft super area of the Unit for every one rupee increase in the lease rental over and above the said minimum lease rental of Rs.58/-(rupees fifty eight only) per sq. ft. super area per month. This provision is confined only to the first term of the lease and shall not be applicable in case of second and subsequent leases/ lease terms of the Unit."</i>
15.	Total sale consideration as per applicant file at page no. 48 of reply	Rs.17,07,405/-
16.	Amount paid by the complainant as per applicant file at page no. 48 of reply	Rs.17,07,406/-
17.	Occupation certificate /Completion certificate	02.06.2020 (as submitted by the counsel for the respondent vide proceedings dated 02.07.2025)
18.	Fit-out offer of possession	22.06.2020 (page 53 of reply)

B. Facts of the complaint:

3. The complainant has made the following submissions:

- I. That the complainant was allotted a virtual space office bearing number 024 admeasuring super area 500 sq. ft., Tower -A, 6th Floor vide unit buyer's agreement dated 08.09.2016 for a total basic sale price of Rs.12,79,000/-.
- II. Thar as per clause No. 34 A(a) it was agreed that:
 - a) The Company will pay to the allottee Rs.29,000/- per month as

committed return for upto 3 years from the date of notice of Possession of the Unit or till the same is put on lease, whichever is earlier. After the Unit is put on lease, then payment of the aforesaid committed return will come to an end and the Allottee will start receiving lease rental in respect of the Unit as described hereinafter.

- b) Further, vide clause No. 34 (e) it was agreed that: "The Company expects to lease out the unit (Individually or in Combination with other adjoining units) at a minimum lease rental of Rs. 58/-Sq. ft. super Area / Month for the first term (of whatever period). If on account of any reason, the lease rent achieved in respect of the first term of the lease is less than the aforesaid Rs. 58/Sq. ft. super area per month, then the company shall pay to the allottee a one time compensation calculated @ 120/sq. Ft. of super area for every one rupees drop in the lease rental below Rs. 58 Only/sq. Ft. Super Area /Month. This provision shall not apply in case of second and subsequent lease.
- c) Further vide clause No. 35 it was agreed that "In cases where the allottee has not opted for leasing arrangement, the company upon obtaining Occupation Certificate from the Government Authority shall offer in writing ("Offer of Possession") possession of the unit to the allottee in terms of this agreement to be taken within 30 days from the date of issue of such notice and the company shall give possession of the unit to the allottee provided the allottee is not default of any of the terms and conditions of this agreement".

III. That unit buyer's agreement was signed between parties on 08.09.2016 vide which it was agreed that 100% payment has to be



made up till 31.08.2017 and the assured return payable by the developer would be as under:

- a) Where allottee has paid Rs.10,93,500/- on signing of MOU, the developer shall pay a Sum of Rs. 17,586/- per month as Assured Return.
- b) Where allottees will pay Rs.1,85,500/- the developer shall pay a sum of Rs.29,310/- per month as assured return.

Further, the developer assures the allottee that they will continue to pay the assured return of Rs.29,310/- per month from 01.09.2017 till offer possession of the unit is offered.

- IV. That the complainant has asked for payment/account statement, then the respondent issued "No Due Certificate" dated 18.09.2019, which shows that the complainant has paid and made all dues clear as and when demanded by the developers.
- V. That as the Occupation Certificate was received vide dated 02.06.2020 and further, no offer of possession made by the respondent to the allottee. Hence, assured return @Rs.29,310/- which was start form 01.09.2017 till valid offer of possession is due from the respondent end and leasing arrangement is still pending/due from the respondent end, neither valid offer of possession was made nor leasing arrangement was made and nor assured return was paid by the respondent end.
- VI. That the respondent illegally sent demand letter in lieu of holding charges from 02.06.2020 and raised demand vide date 07.08.2023 after a long gap time period of the unit. Therefore, the complainant has filed the present complaint before this Authority for compensate the loss by way of failing promises on assured return, leasing arrangements and failure of offer of legal and valid offer of possession till date and along with delay possession interest as per RERA Act,

C. Relief sought by the complainant:

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

- i. Direct the respondent to pay assured return as per the agreement.
- ii. Direct the respondent to handover possession and to pay delay possession charges.
- iii. Direct the respondent to pay leasing arrangement as per agreement.
- iv. Revoke demand letter dated 07.08.2023 issued by respondent in lieu of holding charges and maintenance charges.

D. Reply by the respondent:

5. The respondent vide its reply as well as written submissions dated 15.07.2025 has contested the complaint on the following grounds:

- i. That the complainant at his own free will, booked a virtual space bearing no. 6_024 in the project namely "The Mindspace" on 03.09.2016 for a total sale consideration of Rs.17,07,405/-including applicable tax and additional miscellaneous charges.
- ii. That the construction of the said project was completed way back and the occupancy certificate was applied for. The occupancy certificate has been received on 02.06.2020 by the respondent. The respondent after obtaining OC, issued offers of possession on 22.06.2020.
- iii. That the respondent received initial approval of building plans on 04.12.2015 and started the milestone construction of the present project. Subsequent the respondent started the construction and also began allotting units to the concerned allottees.
- iv. That the complainant has not revealed this fact that he had delayed and defaulted in making payment towards the unit, time and again. However, despite the said inordinate delays and defaults, the respondent issued them offer of possession for fit-out. It must be further noted that after pandemic, the working protocols of the IT sector has transformed into work-from-home, due to which the real estate has

immensely suffered and despite of which, the respondent is adhering to the promises.

- v. That it is a matter of fact that the respondent 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 has successfully procured the occupancy certificate dated 02.06.2020, which exhibits the bona fide intention of the respondent to complete the project.
- vi. 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 01.11.2019 onwards, which was a blow to realty developers in the city.
- vii. That the complainant has misled this Authority and has concealed the fact that they were at default in paying the maintenance cost and services charges, among other incidental charges, for the period of lease to the developer or to any other maintenance agency appointed by the developer, and the same remains unpaid by the complainant. In addition to this, as the offer of possession has already been issued to the complainant, the respondent is also liable to recover maintenance charges from the complainant to the tune of Rs.10/- per sq. ft. per month plus GST and also liable to recover holding charges of Rs.20/- per sq. ft. per month plus GST, calculated from the date of offer of possession to the date of realization of this present complaint, along with maintenance

and holding charges and the same has been sent to complainants vide letter on 07.08.2023.

- viii. That the respondent has duly paid a total of Rs.10,05,099/- to the complainant towards assured returns from September 2014 to February 2020, in terms of the BBA dated 08.09.2016 and as per clause 46 of the BBA, the obligations of the respondent were subject to force majeure events, including pandemics and government-imposed lockdowns. The outbreak of COVID-19 and the consequent disruption of commercial activity directly impacted the continuation of assured returns beyond February 2020. In such force majeure circumstances, no breach or default can be attributed to the respondent.
- ix. That the respondent also issued letters dated 12.12.2022 and 07.08.2023, calling upon the complainant to clear the outstanding dues towards maintenance and holding charges. Despite repeated opportunities, the complainant willfully failed to comply.
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 observes that it has territorial as well as 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.

F. Findings on the objections raised by the respondent:

F.I Objection 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, ban on construction due to orders passed by Hon'ble Supreme Court, non-payment of instalment by different allottees of the project, etc. However, all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 08.09.2019. Hence, events alleged by the respondent do not have any impact on the project being developed by the respondent. As far as other contentions of the respondent w.r.t delay in construction of the project is concerned, the same are disallowed as firstly the orders passed by Hon'ble Supreme Court

banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the project of 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 some of the allottees. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the plea advanced in this regard is untenable.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to pay assured return as per MoU.

G.II Direct the respondent to handover possession of the unit and to pay delay possession charges as per the Act, 2016

10. The complainant has submitted that she was allotted a virtual space office bearing number 024 admeasuring super area 500 sq. ft., Tower -A, 6th Floor vide unit buyer's agreement dated 08.09.2016 for a total basic sale price of Rs.12,79,000/- and she has paid and made all dues clear as and when demanded by the developers. The developer assures the allottee that they will continue to pay the assured return of Rs.29,310/- per month from 01.09.2017 till offer possession of the unit is offered. She has further submitted that the Occupation Certificate was received on 02.06.2020 however, no offer of possession has been made by the respondent to the allottee. Hence, assured return @Rs.29,310/- which was start form 01.09.2017 till valid offer of possession is due from the respondent end. The respondent has submitted that it has duly paid a total of Rs.10,05,099/- to the complainant towards assured returns from September 2014 to February 2020, in terms of the BBA dated 08.09.2016 and as per clause 46 of the BBA, the obligations of the respondent were subject to force majeure events, including pandemics and government-imposed lockdowns.

11. The Authority observes that the money was taken by the builder as a deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the Authority for redressal of her grievances by way of filing a complaint.
12. Further, if the project in which the advance has been received by the developer from an allottee is an ongoing project as per Section 3(1) of the Act of 2016 then, the same would fall within the jurisdiction of the Authority for giving the desired relief to the complainant besides initiating penal proceedings.
13. In the present complaint, the assured return was payable as per Annexure A-1, which is reproduced below for the ready reference:

Clause b.
"The developer further assures the allottee that they will continue to pay the assured return of Rs.29,310/- per month from 01-Sep-17 till offer possession of the unit is offered...."
14. Thus, the assured return was payable @Rs.29,310/- per month w.e.f. 01.09.2017, till possession of the office space is handed over to the complainant by the respondent.
15. In light of the reasons mentioned above, the Authority is of the view that as per the agreement dated 08.09.2016, 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 BBA dated 08.09.2016. Further, it is to be noted that the occupation certificate for the project in question was obtained by the respondents on 02.06.2020 and possession of the unit in question was offered to the complainant on 22.06.2020. However, the same has not been paid in terms of the agreement till date. Accordingly, the liability of the

respondent to pay assured return as per BBA is still continuing. Therefore, the respondent is liable to pay assured return to the complainant at the agreed rate i.e., @Rs.29,310/- per month from the date i.e., 01.09.2017 till date the date of offer of possession i.e. 22.06.2020 as per the unit buyer's agreement, after deducting the amount already paid on account of assured return to the complainant.

16. Further, the complainant is seeking delay possession charges at prescribed rate from the respondent in terms of Section 18 of the Act, 2016.
17. **Due date of possession and admissibility of grace period:** The Hon'ble Supreme Court in the case of *Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018* observed that *"a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract."*
18. In view of the above-mentioned reasoning, the date of execution of BBA i.e. 08.09.2016 is ought to be taken as the date for calculating due date of possession. Therefore, the due date of possession comes out to be 08.09.2019.
19. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges 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.

20. 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.
21. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 30.07.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
22. The definition of term 'interest' as defined under section 2(z) 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;"

23. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **11.10%** by the respondent/promoter which is the same as is being granted to her in case of delay possession charges.
24. On consideration of the documents available on record and submissions made by the complainant, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. As per the findings given above, the possession of the subject unit was to be delivered by 08.09.2019. The occupation certificate for the subject project was obtained by the respondent from the competent authority on 02.06.2020 and thereafter possession of the unit was offered to the complainant on 22.06.2020. Copies of the same have been placed on record. The Authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 08.09.2016 to hand over the possession within the stipulated period.
25. The Authority observes that now, the proposition before the Authority whether an allottee who is getting/entitled for assured return even after expiry of due date of possession, is entitled to both the assured return as well as delay possession charges?
26. 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 the BBA or in a MoU having reference of the BBA or an addendum to the BBA/MoU or allotment letter. The rate at which assured return has been committed by the promoter is Rs.29,310/- per month. If we compare this assured return with delay possession charges payable under proviso to

Section 18 (1) of the Real Estate (Regulation and Development) Act, 2016, the assured return is much better. By way of assured return, the promoter has assured the allottee that she will be entitled for this specific amount from 01.09.2017 upto offer of possession. Accordingly, the interest of the allottee is protected even after the due date of possession is over. The purpose of delay possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottee as her money is continued to be used by the promoter even after the promised due date and in return, she is to be paid either the assured return or delay possession charges whichever is higher.

27. Accordingly, the Authority decides that in cases where assured return is reasonable and comparable with the delay possession charges under Section 18 and assured return is payable even after due date of possession, the allottee shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.
28. In the present case, the assured return was payable till offer of possession of the unit to the complainant. The project is considered habitable or fit for occupation only after the grant of occupation certificate by the competent authority. The respondent has received the occupation certificate from the competent authority on 02.06.2020 and has offered possession of the unit on 22.06.2020.
29. Therefore, considering the above said facts, the Authority directs the respondent to pay assured return to the complainant at the agreed rate i.e., @Rs.29,310/- per month from the date i.e., 01.09.2017 till date the date of offer of possession i.e. 22.06.2020 as per the unit buyer's agreement, after

deducting the amount already paid on account of assured return to the complainant.

G.III Direct the respondent pay leasing arrangement as per agreement.

30. The complainant is seeking relief with respect to payment of committed return as per the unit buyer's agreement dated 08.09.2016. Vide clause 34(c) of the buyer's agreement, the complainant has authorised the respondent to negotiate and finalize the leasing arrangement in respect of the unit, individually or in combination with other adjoining units, with any suitable tenant/s. Further, vide clause 34(A)(a) of the agreement dated 08.09.2016, it was promised and assured to the complainant that an amount of Rs.29,000/- per month will be paid to her as committed return for upto three years from the date of notice of possession of the unit or till the same is put on lease, whichever is earlier. The relevant portion of clause 34 of buyer's agreement is reproduced below for the ready reference:

34. Leasing Arrangement:

"A. (a) the company will pay to the allottee Rs.29,000/- 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..."

31. 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.

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32. The Authority observes that the respondent has received the occupation certificate from the competent authority on 02.06.2020 and has offered possession of the unit to the complainant on 22.06.2020, whereas the unit of the complainant has not been put on lease till date. In light of the reasons mentioned above, the Authority is of the view that as per the buyer's agreement dated 08.09.2016, it was obligation on part of the respondent to pay the committed return. It is necessary to mention here that the respondent has failed to fulfil its obligation as agreed inter se both the parties in agreement dated 08.09.2016. Accordingly, the liability of the respondent to pay committed return as per unit buyer's agreement is still continuing. Hence, the respondent/promoter is liable to pay committed return at the agreed rate i.e., @Rs.29,000/- per month from the date of valid offer of possession after receipt of OC/CC i.e. 22.06.2020 till 3 years from that date i.e. 22.06.2023, as per the unit buyer's agreement dated 08.09.2016, after deducting the amount already paid on account of committed return to the complainant, if any.

G.IV Revoke demand letter dated 07.08.2023 issued by respondent in lieu of holding charges and maintenance charges.

33. The complainant has submitted that vide letter dated 07.08.2023, the respondent is illegally raising demand towards maintenance and holding charges from the complainant from 02.06.2020. As per clause 15 of the buyer's agreement dated 08.06.2016, it was agreed between the parties that the demand with respect to maintenance charges shall become applicable/payable from the date of offer of possession by the respondent. The Authority observes that the occupation certificate for the tower in question was obtained by the respondent on 02.06.2020, whereas possession of the unit was offered to the complainant only on 22.06.2020. Therefore, the demand on account of maintenance charges can only be demanded by the respondent at the time of offer of possession of unit to

the complainant and not before. Further, the respondent cannot not to charge any amount against holding charges from the complainant at any point of time even after being part of the buyer's agreement as per law settled by *Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020*. In view of the above, the demand with respect to holding charges is hereby set-aside. However, the respondent can charge maintenance charges from the complainant, from the date of offer of possession i.e. 22.06.2020.

H. Directions of the authority:

34. 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 assured return to the complainant at the agreed rate i.e., @Rs.29,310/- per month from the date i.e., 01.09.2017 till date the date of offer of possession i.e. 22.06.2020 as per the unit buyer's agreement, after deducting the amount already paid on account of assured return to the complainant.
 - The respondent shall pay committed return at the agreed rate i.e., @Rs.29,000/- per month from the date of valid offer of possession i.e. 22.06.2020 till 3 years from that date i.e. 22.06.2023, as per the unit buyer's agreement dated 08.09.2016, after deducting the amount already paid on account of committed return to the complainant, if any.
 - The respondent is directed to pay the outstanding accrued assured return amount and committed return till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @9.10% p.a. till the date of actual realization.



- iv. The respondent is directed not to charge any amount against holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020. However, the respondent can charge maintenance charges from the complainant, from the date of offer of possession i.e. 22.06.2020.
- v. The respondent is directed to handover possession of the unit to the complainant in terms of the buyer's agreement dated 08.06.2016.
- vi. 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.
35. Complaint stands disposed of.
36. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 30.07.2025

HARERA
GURUGRAM