

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM****Date of decision:** 09.05.2025

NAME OF THE BUILDER		VS REAL PROJECTS PVT. LTD.	
PROJECT NAME		AMB SELFIE SQUARE	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/3390/2024	Anant Rawat V/s VS Real Projects Pvt. Ltd.	Hemant Phogat, Adv. (Complainant) J.K. Dang, Adv. (Respondent)
2.	CR/3393/2024	Anant Rawat V/s VS Real Projects Pvt. Ltd.	Hemant Phogat, Adv. (Complainant) J.K. Dang, Adv. (Respondent)
3.	CR/3394/2024	Anant Rawat V/s VS Real Projects Pvt. Ltd.	Hemant Phogat, Adv. (Complainant) J.K. Dang, Adv. (Respondent)

CORAM:

Shri Arun Kumar

Chairperson**ORDER**

1. This order shall dispose of all the 3 complaints titled as above filed before this authority in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the

Act”) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as “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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the projects, namely, ‘AMB Selfie Square’ being developed by the same respondent promoters i.e., M/s VS Real Projects Pvt. Ltd.
3. The details of the complaints, reply to status, unit no., date of agreement, & allotment, due date of possession, offer of possession and relief sought are given in the table below:

Project Name and Location	“AMB Selfie Square, Sector-37D, Dwarka Expressway, Gurugram, Haryana.
Nature of the project	Commercial complex
Area of the project	3.78 acres
DTCP License no.	14 of 2014 dated 10.06.2014 Valid up to 09.06.2019
RERA registered or not	Registered vide no. 57 of 2017 dated 17.08.2017 Valid up to 16.08.2022
Approval of building plan	16.07.2014
Possession clause 16 of BBA	16. POSSESSION OF THE UNIT 16.1 The company, based upon its present plans and estimates, and subject to all exceptions, proposes to handover possession of the Unit within thirty six (36) months computed from the date of execution of Buyer’s Agreement, excluding additional grace period of twelve (12) months, subject to force majeure circumstances and reasons beyond the control of the Company (“Commitment Period”).
Occupation certificate	Not obtained



Complaint no.	CR/3390/2024	CR/3393/2024	CR/3394/2024
Date of filing of complaint	23.07.2024	23.07.2024	23.07.2024
Reply filed by the respondent on	08.11.2024	08.11.2024	08.11.2024
Unit no.	Shop no. 43, Ground floor [Page 17 of complaint]	Shop no. 69, Ground floor [Page 36 of complaint]	Shop no. 49, Ground floor [Page 54 of complaint]
Super Area of the unit	525 sq. ft. [Page 17 of complaint]	539 sq. ft. [Page 36 of complaint]	543 sq. ft. [Page 54 of complaint]
Date of booking	01.10.2017 [Page 17 of complaint]	01.10.2017 [Page 81 of complaint]	04.09.2014 [Page 12 of complaint]
Date of Provisional Allotment	11.10.2017 [Page 17 of complaint]	11.10.2017 [Page 81 of complaint]	04.12.2017 [Page 12 of complaint]
MoU between respondent and original allottee	06.11.2017 [Page 23 of complaint]	06.11.2017 [Page 20 of complaint]	18.12.2017 [Page 27 of complaint]
Assured return	2.1 The Developer, agrees and undertakes to pay to the Allottee Assured Return only in case of any delay in issuance of letter of offer of possession beyond 01.10.2020 than only in such a case the developer shall the assured return as under: Amount of monthly assured return- ₹ 72,250/- Payable from- 01.10.2020 Payable till- Till issuance of letter of offer of possession	2.1 The Developer, agrees and undertakes to pay to the Allottee Assured Return only in case of any delay in issuance of letter of offer of possession beyond 01.10.2020 than only in such a case the developer shall the assured return as under: Amount of monthly assured return- ₹ 75,512/- Payable from- 01.10.2020 Payable till- Till issuance of letter of offer of possession	2.1 The Developer, agrees and undertakes to pay to the Allottee Assured Return only in case of any delay in issuance of letter of offer of possession beyond 01.11.2020 than only in such a case the developer shall the assured return as under: Amount of monthly assured return- ₹ 58,177/- Payable from- 01.11.2020 Payable till- Till issuance of letter of offer of possession
Endorsement /Subsequent Allottee	21.07.2018 [Not on record]	21.07.2018 [Not on record]	21.07.2018 [Not on record]
Date of Builder Buyer Agreement	24.10.2020 [Page 33 of complaint]	24.10.2020 [Page 29 of complaint]	Not executed [Page 53 of complaint]
Due date of possession	24.10.2024	24.10.2024	N/A
Total sale consideration	₹ 43,12,536/-	₹ 39,31,989/-	₹ 42,70,263/-

Amount paid by the complainant	₹ 41,05,246/-	₹ 36,29,220/-	₹ 40,40,857/-
Occupation certificate	Not received	Not received	Not received
Notice of possession	Not offered	Not offered	Not offered
Relief sought	Arrears as well as monthly assured return as per terms of MOU executed inter se parties	Arrears as well as monthly assured return as per terms of MOU executed inter se parties	Arrears as well as monthly assured return as per terms of MOU executed inter se parties

4. The facts of all the complaints filed by the complainants/ allottees are also similar. Out of the above-mentioned cases, the particulars of lead case **CR/3390/2024 titled as Anant Rawat V/s VS Real Projects Pvt. Ltd.** are being taken into consideration for determining the rights of the allottees qua assured return in terms of MOU executed inter se parties.

A. Unit and project related details

5. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, date of buyer's agreement etc, have been detailed in the following tabular form:

CR/3390/2024 titled as Anant Rawat V/s VS Real Projects Pvt. Ltd.

S. N.	Particulars	Details
1.	Name of the project	AMB Selfie Square, Sector 37D, Dwarka Expressway, Gurugram, Haryana
2.	Nature of the project	Commercial Complex
3.	Area of the project	3.78 acres
4.	RERA Registered/ not registered	Registered vide no. 57 of 2017 dated 17.08.2017 Valid up to 16.08.2022
5.	License no. and validity	14 of 2014 dated 10.06.2014 Valid up to 09.06.2019
6.	Unit no.	Shop no. 43, Ground floor



		[Page 17 of complaint]						
7.	Super area of unit	525 sq. ft. [Page 17 of complaint]						
8.	Date of booking	01.10.2017 [Page 17 of complaint]						
9.	Date of Provisional Allotment	11.10.2017 [Page 17 of complaint]						
10.	MoU between respondent and original allottee	06.11.2017 [Page 23 of complaint]						
11.	Endorsement/Subsequent Allottee	21.07.2018						
12.	Date of Builder Buyer Agreement between complainant and Respondent	24.10.2020 [Page 33 of complaint]						
13.	Assured return clause as per MoU	<p>2.1 The Developer, agrees and undertakes to pay to the Allottee Assured Return only in case of any delay in issuance of letter of offer of possession beyond 01.10.2020 than only in such a case the developer shall the assured return as under:</p> <table> <tr> <th>Amount of monthly Assured return</th><th>Payable from</th><th>Payable till</th></tr> <tr> <td>72,250/-</td><td>01.10.2020</td><td>Till issuance of letter of offer of possession</td></tr> </table> <p>[Page 25 of complaint]</p>	Amount of monthly Assured return	Payable from	Payable till	72,250/-	01.10.2020	Till issuance of letter of offer of possession
Amount of monthly Assured return	Payable from	Payable till						
72,250/-	01.10.2020	Till issuance of letter of offer of possession						
14.	Possession clause as per BBA	16. POSSESSION OF THE UNIT						

		<p>16.1 The company, based upon its present plans and estimates, and subject to all exceptions, proposes to handover possession of the Unit within thirty six (36) months computed from the date of execution of Buyer's Agreement, excluding additional grace period of twelve (12) months, subject to force majeure circumstances and reasons beyond the control of the Company ("Commitment Period").</p> <p>[Page 48 of complaint]</p>
15.	Due date of possession	<p>24.10.2024</p> <p>[Including grace period being unqualified and unconditional]</p>
16.	Total sale consideration [including BSP + PLC + EDC + IDC + right to use car parking (if applicable)]	<p>Rs.43,12,536/-</p> <p>[As per provisional allotment and schedule of payment at page 17 & 18 of complaint]</p>
17.	Amount paid by the complainant	<p>Rs.41,05,246/-</p> <p>[As per statement dated 18.12.2017 and BBA at page 16 & 40 of complaint]</p>
18.	Occupation certificate /Completion certificate	Not received
19.	Notice of possession	Not offered

B. Facts of the complaint

6. The complainant has made the following submissions in the complaint:

- a. That after going through the advertisement on internet and as per the brochure provided by the respondent, the brother of the complainant namely Sameer Singh Rawat had initially booked a unit bearing no. 19 and against which an alternative unit bearing no. 43 on ground floor, having its super area 525 sq. ft. was allotted in the project of the respondent named **"AMB SELFIE SQUARE"** commercial complex

situated at Sector-37D, Gurugram on 11.10.2017 for a total sale consideration (BSP+EDC+IDC) of ₹ 43,12,536/-, and for the basic sale price of ₹ 40,30,086/- along with one covered car parking and the complainant had paid a total sum of Rs. 36,29,220/-.

- b. That the respondent promised and undertook to pay assured returns in respect of the above said unit against substantial advance payments done up to 2017, and a MOU dated 06.11.2017 in this regard was executed by the respondent. As per the clause 2.1 of the MOU dated 06.11.2017, the respondent undertook and committed to pay a monthly assured return to the tune of Rs. 72,250/- payable from 01.10.2020 till issuance of letter of offer of possession.
- c. That in the year, 2017, the brother of the complainant namely Sameer Singh Rawat underwent a knee surgery and therefore, due to subsequent rehabilitation was not able to look after the status of the project and for the said reason, transferred the above said unit in favor of his elder brother i.e., the complainant. The said transfer was duly acknowledged by the respondent and an endorsement to this effect was made in the name of the complainant on 21.07.2018. Subsequently, a builder buyers agreement dated 24.10.2020 was made in favour of the complainant by the respondent.
- d. That the complainant has paid all his due payments towards the unit in a timely manner as and when demanded by the respondent and no dues are pending in respect of the unit, but despite of paying almost approx. 85%, of the total sale consideration up to 2017, the respondent has failed to honor his own commitment for delivery of project and for

monthly assured returns and has not paid a single rupee towards the assured returns to the complainant.

- e. That as per section 11(4)(a) of the Act, the builder is under legal obligation to pay the assured return to the complainants in terms of the MOU dated 06.11.2017. The complainant has taken all possible requests and gestures to persuade the respondent, whereby requesting it to pay the monthly assured return, through e-mails and by personally visiting their office but the respondent failed miserably, in paying the assured returns and completely ignored the request and genuine demands of the complainant. The cause of action is continuing and is still subsisting on day-to-day basis.

C. Relief sought by the complainant:

7. The complainant has sought the following relief(s):
- Direct the respondent to start paying the monthly assured returns, immediately, as complainant is in dire need of money, having invested his lifetime savings in this project.
 - Direct the respondent to pay the arrears of unpaid assured return as per the terms and conditions of the MOU dated 06.11.2017, with compound interest.
8. On the date of hearing, the authority explained to the respondent /promoters about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

9. The respondent has contested the complaint on the following grounds by way of reply dated 08.11.2024 and written arguments dated 28.02.2025:

- a. That the present complaint is not maintainable in law or in facts. It is submitted that the present complaint is not maintainable before this Hon'ble Authority under the Act, 2016 and the Rules, 2017. Moreover, it is respectfully submitted that complaints pertaining to assured return are outside of the scope of this Hon'ble Authority and thus, the present complaint cannot be adjudicated upon by this Hon'ble Authority. The present complaint is liable to be dismissed on this ground alone. Even otherwise, the complaint is not maintainable in law and merits dismissal.
- b. That the payment of assured returns by a builder to a homebuyer is barred under the Banning of Unregulated Deposit Schemes (BUDS) Act, 2019. The directions to pay assured returns violated the provisions of the Act and thus, any relief pertaining to assured returns cannot be granted by this Honourable Authority. Thus, the frivolous and misconceived complaint filed by the complainant is liable to be dismissed on this ground as well.
- c. That the respondent had submitted an application for grant of license to Directorate of Town and Country Planning Department, Haryana, Chandigarh for development of a commercial colony over land admeasuring 30 kanal 4 Marla (3.775 Acres approximately) situated in Sector 37D, in revenue estate of village Harsaru, Gurugram. Subsequently, license bearing no. 14 dated 10.06.2014 had been issued by Directorate of Town and Country Planning, Haryana, Chandigarh. That building plans for the project in question had been duly approved/sanctioned vide memo bearing no. ZP-976/AD(RA)/2014/15562 dated 16.07.2014.

- d. That the original allottee was provisionally allotted unit bearing no. 43 admeasuring 525 sq. ft. (super area) approx. located on the ground floor of the said project. The original allottee had opted for a Down Payment Plan in terms of which a sum of Rs.34,13,211/- was payable upon booking, Rs.2,82,450/- within 30 days of booking and Rs.6,16,875/- along with 100% stamp duty, registration charges, IFMS, Sinking Fund and all other charges payable in terms of the Buyer's Agreement, at the time of offer of possession.
- e. That the original allottee and the Respondent had executed a Memorandum of Understanding (MOU) dated 06.11.2017 pertaining, inter alia, to payment of assured returns in terms of the payment plan opted by the original allottee, at the joint request made by the original allottee and the complainant, the unit was transferred in favour of the complainant. Thereafter, Buyer's Agreement dated 24.10.2020 was executed by the Complainant and the Respondent. It is pertinent to mention herein that the Buyer's Agreement was willingly and consciously executed by the Complainant after duly understanding and accepting the terms and conditions set out therein and without raising any objections. The terms and conditions of the buyer's agreement dated 24.10.2020 are binding upon the complainant with full force and effect.
- f. That this Honourable Authority had published circular dated 27.03.2020 wherein it had been duly mentioned that the completion date of the projects registered with this Honourable Authority had been extended till 30.06.2020. Thereafter, this Honourable Authority had published order bearing no. 9/3-2020 HARERA/GGM(Admn)

dated 26.05.2020 wherein it had been duly mentioned that the completion date of the projects registered with this Honourable Authority would automatically stand extended by a period of 6 months on account of outbreak of Covid-19. Furthermore, it had also been stipulated in the aforesaid order that the outbreak of Coronavirus Pandemic would be considered a force majeure event and the Developers would not need to file any application regarding invocation of force majeure clause.

- g. That subsequently, due to the prevalence of Covid-19 pandemic, ban on construction activities in the NCR on account of orders passed by the NGT and the unforeseen delays and complications beyond the power and control of the respondent, the same constituted a Force Majeure condition which has delayed completion of the project as originally planned. It is pertinent to mention herein that construction of the project is being carried out in full swing and is nearing completion. However, the approach road from the Dwaraka Expressway is yet to be constructed by the Government. The Government has already acquired the land from the respondent for the purposes of constructing a service road adjacent to the Dwaraka Expressway through which access to the project is supposed to be given. Thus, it is submitted that even if possession of units in the project is offered to the allottees, until and unless the service road is not constructed and approach is not provided by the Government, the allottees cannot access the unit/Project. The respondent, on its part has been following up the matter with the Government for the said

purpose but no definite time frame has been promised by the Government as on date.

- h. That the respondent is committed to completion of the project and delivering the project subject to force majeure conditions and timely payment of instalments and compliance of the terms and conditions of the agreement between the complainant and the respondent. The institution of the present complaint is highly premature and misconceived and the same is liable to be dismissed at the very threshold.
10. 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.
11. Written submissions filed by the respondent is also taken on record and considered by the authority while adjudicating upon the relief sought by the complainant.

E. Jurisdiction of the authority

12. 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

13. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

14. Section 11(4) (a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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) *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."*

15. 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(s) at a later stage.

F. Findings on the relief sought by the complainant

F.I. Assured return

16. The complainant is seeking Assured Returns as per the terms and conditions of the MOU executed inter se parties and the arrears of unpaid assured return along with interest on such unpaid assured return. It is pleaded that the respondent has not complied with the terms and conditions of the said MOU. The respondent refused to pay the same by taking a plea that the same is not payable in view of enactment of the Banning of Unregulated Deposit Schemes Act, 2019 (hereinafter referred

to as the Act of 2019), citing earlier decision of the authority (Brhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd., complaint no 141 of 2018) whereby relief of assured return was declined by the authority. The authority has rejected the aforesaid objections raised by the respondent in **CR/8001/2022 titled as Gaurav Kaushik and anr. Vs. Vatika Ltd.** wherein the authority has held that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon and the Act of 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per section 2(4)(l)(iii) of the Act of 2019. Thus, the plea advanced by the respondent is not sustainable in view of the aforesaid reasoning and case cited above.

17. The money was taken by the builder as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the complainant-allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.
18. Further, the MOU/agreement defines the builder buyer relationship. So, it can be said that the MOU/agreement for assured returns between the promoter and allottee arises out of the same relationship. So, the amount



paid by the complainant to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent is liable to pay assured return to the complainant-allottee in terms of the MOU dated 06.11.2017.

19. It is pertinent to mention here that clause 2.1. of the MOU dated 06.11.2017 provides for assured return and the same is reproduced as under for ready reference:

*"2.1 The Developer, agrees and undertakes to pay to the Allottee Assured Return **only in case of any delay in issuance of letter of offer of possession beyond 01.10.2020** than only in such a case the developer shall the assured return as under:*

Amount of monthly Assured return	Payable from	Payable till
72,250/-	01.10.2020	Till issuance of letter of offer of possession

(Emphasis supplied)"

20. By way of aforesaid assured return clause, the promoter has assured that the complainant-allottee would be entitled to the assured return amount only in case of any delay in issuance of letter of offer of possession beyond 01.10.2020 and the same is payable w.e.f. 01.10.2020 till issuance of letter of offer of possession. The payment of assured return after the committed date in the MOU is to safeguard the interest of the allottees as their money is continued to be used by the promoter even after the promised due date.
21. Assured return payable is encapsulated in the following table for all the complaints:

Complaint no.	Amount of monthly Assured return	Payable from	Payable till
CR/3390/2024	₹ 72,250/-	01.10.2020	Till issuance of letter of offer of possession



CR/3393/2024	₹ 75,512/-	01.10.2020	Till issuance of letter of offer of possession
CR/3394/2024	₹ 58,177/-	01.11.2020	Till issuance of letter of offer of possession

22. On consideration of the documents available on the record and submissions made by the parties, the complainant has sought Assured Returns as per the terms and conditions of the MOU executed inter se parties and the arrears of unpaid assured return along with interest on such unpaid assured return. As per clause 2.1 of the MOU dated 06.11.2017 i.e., ₹ 72,250/- per month to allottee from 01.10.2020 till the date of issue of notice of possession of the unit. The said clause further provides that it is the obligation of the respondent promoter to pay the assured returns. It is matter of record that the respondent has not paid a single penny towards the assured return as committed by it under the MOU executed inter se parties and it is only by way of written arguments dated 28.02.2025, the respondent has refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019. But that Act of 2019 does not create a bar for payment of assured returns even after coming into operation and the payments made in this regard are protected as per section 2(4)(iii) of the above-mentioned Act.
23. Admittedly, the respondent has neither obtained occupation certificate nor has offered the possession of the subject unit to the Complainant-allottee. Therefore, considering the facts of the present case, the respondent builder is directed to pay the assured return amounting to ₹ 72,250/- per month to the Complainant-allottee with effect from 01.10.2020 till the date of issuance of notice of possession of the unit after

obtaining occupation certificate from the competent authority in terms of clause 2.1 of the MOU dated 06.11.2017.

24. Accordingly, the respondent is directed to pay the outstanding accrued assured return amount 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.

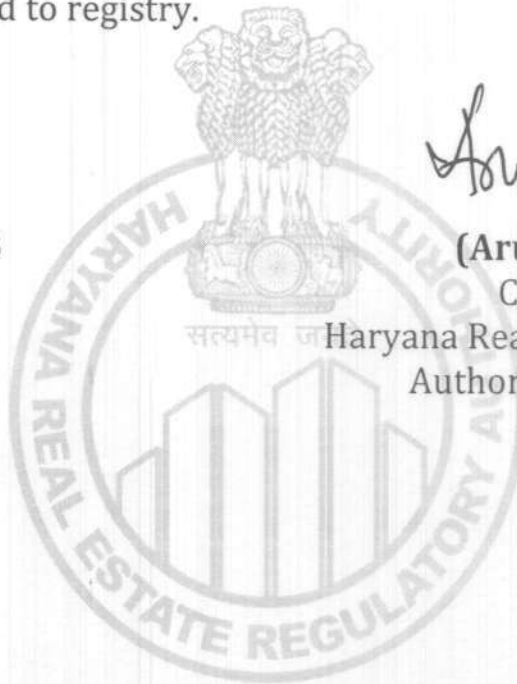
G. Directions of the authority

25. 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 builder is directed to pay the assured return amounting to ₹ 72,250/- per month to the Complainant-allottee with effect from 01.10.2020 till the date of issuance of notice of possession of the unit after obtaining occupation certificate from the competent authority in terms of clause 2.1 of the MOU dated 06.11.2017.
 - The respondent is directed to pay the outstanding accrued assured return amount 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.
 - The respondent shall not charge anything from the complainant(s) which is not the part of the builder buyer agreement.



26. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein details of rate of assured return, area of the unit and amount paid by the complainant(s)-allottee is mentioned in each of the complaints.
27. The complaints as well as applications, if any, stand disposed of.
28. True certified copies of this order be placed on the case file of each matter.
29. Files be consigned to registry.

Dated: 09.05.2025



Arun Kumar

(Arun Kumar)

Chairman

Haryana Real Estate Regulatory
Authority, Gurugram

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GURUGRAM