

BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no : 5419 of 2022
First date of hearing: 13.10.2022
Date of decision : 22.07.2025

Ajay Aggarwal

R/o: H-2504, Ireo Grand Arch, Arch View Drive, Sector 58,
Gurugram-122011

Complainant**Versus**

1. Splendor Buildwell Pvt. Ltd.

Regd. office: Splendor forum, 5th floor, plot 3, District Centre
Jasola, New Delhi-110025

2. Splendor Landbase Ltd.

Regd. Office: Splendor forum, 3, District Centre Jasola, New
Delhi-110025

Respondents**CORAM:**

Shri Arun Kumar

Chairman

Shri Ashok Sangwan

Member**APPEARANCE:**

Sh. Garvit Gupta (Advocate)

Complainant

Sh. Shriya Takkar & Smriti Srivastava (Advocate)

Respondents

Sh. Manish Parkash

AR of the company**ORDER**

1. That the present complaint has been filed by the complainants/allottees 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 parties.

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A. Project and unit related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), 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	"Spectrum One", Sector 58, Gurugram, Haryana
2.	Project area	6.775 acres
3.	Nature of the project	IT/Cyber Park
4.	DTCP license no.	82 of 2010 dated 12.10.2010
5.	License valid up to	29.05.2020
	Name of licensee	Ishayu Builders and Developers Pvt. Ltd.
5.	RERA Registered/ not registered	Registered vide no. 376 of 2017 dated 07.12.2017 Valid up to 31.12.2018
6.	Unit no.	525, 5 th floor, tower D [As admitted by the respondent on page 38 of reply]
7.	Unit area admeasuring	500 sq. ft.
8.	Date of booking	13.04.2011 [Page 34 of complaint]
9.	Date of execution buyers' agreement	Not executed
10.	MoU	13.04.2011 (Page no. 39 of complaint)
11.	Assured return as per MoU	Clause 4: That the Developer will pay Rs. 55/- (Rupees Fifty Five Only) per sq. ft. per month on 500 sq. ft. as an assured return to the Allottee from 15 th April, 2011 till offer for possession of the space. Thereafter the Developer shall pay Rs. 45/- (Rupees Forty Five Only) per sq. ft. per month on 500 sq. ft. as assured rental till the offered space is leased out to Intended Lessee. The Developer has represented to the Allottee

		that the possession of the Said Unit shall be handed over by the Developer to the Allottee within a maximum period of 3 (three) years after approval of Building plans of the Said Project from competent authorities and after receipt of completion certificate of the Said Project subject to force majeure. That the Allottee hereby agrees accepts and confirms the authority and power of the Developer for any variation/change in the location/area of the Said Unit allotted to him and that the allotment is provisional. [Page 42 of complaint]
12.	Date of environment clearance	12.07.2013
13.	Date of building plan approval	NA
14.	Due date of possession	12.07.2016 *Note: The date of building plan approval has not been provided by any of the parties. Only the date of environmental clearance has been furnished. Therefore, the due date has been calculated based on the date of environmental clearance.
15.	Total basic sale consideration	Rs.20,00,000/- (As per page no. 41 of complaint)
16.	Amount paid by the complainant	Rs.23,03,000/- (As admitted by the respondent at page 26 of reply)
17.	Occupation certificate /Completion certificate	06.09.2019 (As per on page 210 of reply)
18.	Offer of possession	25.02.2021, 30.03.2021 [Page 212 and 216 of reply]

B. Facts of the complaint

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

- The complainant is a law-abiding and peace-loving individual who has consistently acted in accordance with the terms of the allotment, the applicable rules and regulations, and the provisions of law. He has not committed any illegality in fulfilling his contractual obligations. The booking was made by him,

and all payments were made diligently, with the sincere hope and effort to realize his dream of owning an office for a peaceful and secure life.

- b) That respondent no. 2 offered for sale units in an IT/ITES project known as 'Spectrum One', which was claimed to comprise several facilities on a parcel of land situated in Sector-58, Gurugram, Haryana. Respondent No. 2 stated that it is well established in the business of real estate development and has significant expertise in the development and marketing of commercial complexes, malls, integrated townships, residential and commercial buildings, and IT/Cyber Park projects across various parts of Northern India. Respondent No. 2 also claimed that the Department of Town and Country Planning (DTCP), Haryana, had granted License No. 82 of 2010 for a land area of approximately 6.775 acres in Village Behrampur, Tehsil Sohna, District Gurugram, to its associate companies for the development of an IT park project, in accordance with the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975, and the Rules framed thereunder in 1976.
- c) That the complainant and his brother Sh. Atul Agarwal received a marketing call from the office of respondent no.2 in the month of March, 2011 for booking in the said project of the respondents. The complainant and his brother Sh. Atul Agarwal had also been attracted towards the aforesaid project on account of publicity given by the respondent no.2 through various means like various brochures, posters, advertisements etc. The complainant and his brother Sh. Atul Agarwal visited the sales gallery and consulted with the marketing staff of the respondent no.2. The marketing staff of the respondent no.2 painted a very rosy picture of the project and made several representations with respect to the innumerable world class facilities to be provided by the respondent no.2 in their project. The marketing staff of the respondent no.2 also assured timely

delivery of the unit. It was specifically projected by the respondent no.2 that the main USP of its said project is that it would diligently offer the allottees assured return on the amount paid by the complainant and his brother.

- d) That the complainant and his brother Sh. Atul Agarwal, induced by the brochure of the project and the assurances and representations made by the respondent no.2, decided to book a unit in the project of the respondent no.2 as they required the same in a time bound manner. This fact was also specifically brought to the knowledge of the officials of the respondent no.2 who confirmed that the possession of the unit to be allotted would be positively given within the agreed time frame. On the basis of the representations made by the respondent no.2 and on its demand, the complainant and his brother Sh. Atul Agarwal made the payment of the total basic price of the unit amounting to Rs. 20,00,000/-. The respondent no.2 provided the complainant and his brother Sh. Atul Agarwal with a copy of the application form. After going through the application form, the complainant and his brother Sh. Atul Agarwal realized that the provisions contained in the said application form were wholly one sided, unilateral, arbitrary, illegal, unfair and biased in favour of the respondent no.2 and were totally un-balanced and unwarranted.
- e) That it was stated in the application form that in the event of non-payment of instalment amount by the complainant, the complainant would be liable for penalty @ 18% per annum. However, in case of delay on the part of the respondent no.2 in offering possession, the complainant was shown to be entitled to only a meagre amount of Rs. 10/- per sq.ft. per month.
- f) That the complainant made vocal their objections to the arbitrary and unilateral clauses of the application form to the respondent no.2. The complainant repeatedly requested the respondent no.2 for execution of an



application form with balanced terms. During such discussions, the respondent no.2 assured the complainant that the terms of the application form are tentative in nature and that the terms of the agreement which would be sent by it in due course of time would be more balanced. The respondent/promoter no.2 refused to amend or change any term of the pre-printed application form and further threatened the complainant to forfeit the previous amount paid towards the unit if the application form is not signed and submitted. The complainant and his brother, were left with no other option but to sign the one-sided application form for an allotment of a 500 sq.ft. unit.

- g) That on the said date, a Memorandum of Understanding was executed between the respondent no.2 and the complainant and his brother. As per clauses 2 and 3 of the MOU, the total basic sale consideration of the unit was Rs. 20,00,000/- and the said amount had already been paid by the complainant. The respondent no.2 had categorically assured at the time of the booking that it would be diligent in making payment towards the assured return and in adhering to its contractual obligations. As per clause 4 of the said MOU, it was agreed that the respondent no.2 would pay Rs. 55/- per sq.ft. per month on 500 sq.ft. as an assured return to the complainant and his brother from 15.04.2011 till offer of possession.
- h) That it was further agreed as per clauses 7 and 8 of the said MOU that the respondent no.2 would put the said unit on lease and the minimum rent would be of Rs. 45/- per sq.ft. of super built up area per month and if for any reason, the lease rent charges is less than Rs. 45/- per sq.ft. of super built up area per month, then the respondent no.2 would return to the complainant, a sum calculated at Rs. 122/- per sq.ft. of super built up area for every one rupee drop in the lease rentals below Rs. 45/-per sq.ft. per month. As per clause 12 of the

said MOU, it was specifically stated that respondent no.2 would keep on giving monthly cheque of assured return to the allottee. As per clause 13 of the said MOU that the respondent no.2 would enter into a space/unit-buyer agreement with the complainant and his brother in respect of the said unit.

- i) That the complainant intimated to the respondent no.2 vide his letter dated 31.10.2011 that the brother of the complainant Sh. Atul Agarwal had decided to remove his name as the co-allottee in the MOU dated 13.04.2011 and in all documents pertaining to the said unit, executed or to be executed and submitted an indemnity bond regarding the same. The complainant and his brother also submitted a formal application letter dated 26.12.2011 regarding the deletion of the name of the brother of the complainant and the said request was eventually acceded to by the respondent no.2.
- j) That respondent no.1 vide its letter dated 27.10.2012 intimated to the complainant that respondent no.2 was its holding company and that respondent no.1 had succeeded to all the rights, interests and obligations of respondent no.2 in the said project. It was also informed vide clause 4 of the said letter that respondent no.1 would deal with the complainant for all intent and purposes and for execution of all the terms and conditions contained in the MOU including discharge of future liability towards payment of assured return as per clause 5 of the MOU. On the receipt of the said letter, the complainant visited the office of respondent no.1 to enquire about the execution of the agreement as was specifically stated in the MOU and for allotment of a specific unit in the said project. The representatives of respondent no.1 assured the complainant the allotment of the unit and execution of the agreement are in process and that it would intimate the complainant about the same soon. In the meanwhile, the representatives of respondent no.1 requested the complainant

to keep on making payments towards the total sale consideration. Payment demands were raised by respondent no.1 and the complainant kept on abiding by the same. The complainant has till date made the payment of Rs. 23,030,00/- towards the total sale consideration of the unit.

- k) That the respondent no. 1 miserably failed to abide by its obligations under the said MOU. The respondent/promoter even failed to perform the most fundamental obligation of the MOU which was to handover the possession of the unit within the promised time frame, which in the present case was delayed for an extremely long period of time. The failure of the respondents and the fraud played by it is writ large.
- l) That as per clause 4 of the MOU, the possession of the unit was to be handed over by the respondent no.1 within a maximum period of three years from the date of approval of the building plans. The complainant visited the office of respondent no.1 in January, 2014 to enquire about the date of possession, date of execution of the agreement and about the allotment of a specific unit to the complainant. Respondent no.1 had miserably failed to send even a draft agreement to the complainant. The representatives of respondent no.1 again assured that the process of allotment and execution of the agreement would be soon executed. When the complainant specifically raised the issue of handing over the possession and the date of approval of the building plan, the representatives started side-lining the issue. However, it was informed that the environment clearance of the said project had already been obtained on 12.07.2013. Thus, it became clear that the building plan of the project was obtained by respondent no.1 from the authorities on or before 12.07.2013 as an environment clearance of the project could only be issued if a building plan of the said project is approved. Although the due date to handover the

possession is to be computed from the date of approval of the building plan, in the worst scenario, the due date to handover the possession of the unit was on or before 12.07.2016.

- m) That the complainant on the lapse of the due date to handover the possession yet again visited the office of respondent no.1 in the month of June, 2017 as it had committed various acts of omission and commission by making incorrect and false statements at the time of booking. The representatives of respondent no.1 assured the complainant that the possession of the unit would be handed over to him very shortly as the construction was almost over and that it would keep on making payment towards the monthly assured return as per its obligations as stated in the MOU. It was also assured that respondent no.1 would make the payment towards the delayed possession interest as per the prescribed rate as stipulated in the then newly enacted Real Estate (Regulation and Development) Act, 2016. Although, the complainant was reluctant to believe the representations made by the respondent no.1, it decided to give one more chance to respondent no.1.
- n) That respondent no. 1 vide its letter dated 13.02.2018, informed the complainant that the construction of its project "Splendor Spectrumone" was on the completion stage.
- o) That the complaint has received assured returns for upto the month of September, 2018. Respondent no.1 was regular in payments of assured returns to the complainant upto the month of December, 2017; and thereafter from the month of January, 2018 started defaulting/delaying the assured return payments. The assured return payments with respect to January, 2018 was paid vide cheque dated 15.04.2018, for the month of February, 2018 was paid vide cheque dated 15.05.2018, for March, 2018 was paid vide cheque dated

05.07.2018, for the month of April 2018 was paid vide cheque dated 05.09.2018, and thereafter respondent no. 1 stopped the payments towards the assured returns. The complainant vigorously followed up with respondent no. 1 and after much persuasion, the assured return for the months of May 2018 to September, 2018 was received together by the complainant on 02.11.2018. Subsequently no payments towards assured returns were received by the complainant. The complainant made several visits to the office of respondent no 1 for the assured returns. During his visit to the office of respondent no.1 on 12.08.2019, the representatives of respondent no.1 requested him to forego the assured return for the month of October, 2018 stating some financial difficulties. It was assured and promised by the representatives of respondent no.1 that the said amount would be adjusted along with interest at the time of final offer of possession and that it would expedite the process of execution of an Agreement as per Act, 2016 and allotment of a specific unit. It was also stated that it would continue to be liable to make payment towards the monthly assured return to the complainant as per the mutually agreed terms of the MOU. Believing in the assurances and promises of respondent no. 1, the complainant, in good faith, wrote a letter dated 12.08.2019 wherein he agreed to forego the assured return for the month of October, 2018.

- p) However, yet again, the assurances made by the respondent no.1 turned out to be false. Despite issuance of the letter dated 13.02.2018, there was no intimation about the allotment of a unit and handing over a specific unit to the complainant. It became clear that the said letter was nothing but a tactic adopted by respondent no.1 to somehow misguide and mislead the complainant. No concrete steps were taken by the respondent no.1 for execution of the agreement, allotment of a specific unit and for handing over

the possession to the complainant. Rather, respondent no.1 stopped making payment towards the assured return to the complainant from October, 2018 onwards and acted strictly in contrast to the terms of the MOU. Accordingly, the complainant went to meet the representatives of the respondent no.1 at the project site after the first wave of Covid-19-pandemic on 18.01.2021, to enquire about the possession of the unit, the complainant was shocked to see the construction status. The construction activity of the said project was fully complete and the leasing of the unit had already commenced. Even from a bare perusal of the photographs of the project on the website of respondent no.1, it was clear that the project was fully constructed and complete. It became clear that the act of omission on the part of respondent no.1 in executing the agreement, allotting a unit, payment of assured return scheme and finally handing over the possession was nothing but a deliberate attempt of respondent no.1 to evade from its contractual obligations. The respondent no.1 has continuously been misleading the allottees including the complainant by giving incorrect information and timelines within which it was to hand over the possession of the unit to the complainant. The respondent/promoter no.1 had represented and warranted at the time of booking that it would deliver the dream unit of the complainant to him in a timely manner. However, the failure of the respondent no.1 has resulted in serious consequences being borne by the complainant.

- q) That vide letter dated 25.01.2021, the complainant called upon respondent no.1 to execute a proper agreement and conveyance deed with the complainant in his favour, to fulfil the obligations of payment of monthly assured return scheme to the complainant as set out in the MOU and to make payment towards the delayed interest charges for its failure in handing over the possession. The

complainant vide the said letter highlighted the high headedness of respondent no.1 which was an illustration of how respondent no.1 conducts its business which was only to maximize the profits with no concern towards the buyers including the complainant.

- r) That vide letter dated 25.02.2021, respondent no.1 intimated to the complainant that the construction and development of the project was completed and that the government authorities had also issued an Occupation certificate for the project in question. Respondent no.1 vide the said letter stated that it was ready and willing to execute the conveyance deed transferring the title, right and interest in respect of the unit to the complainant and requested the complainant to visit its office. The said letter dated 25.02.2021 was not a proper offer of possession as the possession was not offered and the payment demands were not made to the complainant. When the complainant visited the office of respondent no.1, it was informed to him that certain payment demands are payable by the complainant to respondent no.1. The complainant expressed his willingness to take the physical possession of the unit. Despite the visit made by the complainant, respondent no.1 vide its letter dated 30.03.2021 stated that there was no response from the complainant. It was informed to the complainant that due to low demand and hostile market scenario due to Covid-19 Pandemic, the unit of the complainant could not be leased out and there was hardly any demand for fresh leasing. The respondent no.1 vide the said letter stated that in lieu of Banning of Unregulated Deposit Schemes, Act, 2019, it was not liable to make any payment towards the monthly assured return to the complainant. The respondent no.1 vide the said letter also demanded Rs. 18,46,113/- out of which Rs. 9,20,400/- towards the right to use covered car space charges were optional. The said demand also included labour

cess charges of Rs. 9,075/- which is not payable by the complainant to respondent no.1. Vide the said letter, it was also informed that the complainant would be liable to pay certain other charges as per the maintenance agreement to its maintenance agency. Till date no maintenance agreement has been executed between the parties in question.

- s) That after the receipt of the said letter, the complainant visited the office of respondent no.1 to meet the representatives of the respondent no.1. Despite giving a specific time for a meeting, the representatives failed to meet the complainant. The complainant again visited the project site on 07.09.2021 to check the readiness of the project and was shocked to see that no independent units have been constructed. Aggrieved by the same, the complainant again wrote to the respondent no.1 vide its letter dated 13.09.2021 and requested the unit be earmarked, allotted and unit number be provided to the complainant. It was also specifically informed to respondent no.1 that only once the same was done, the complainant would make the payment towards the remaining due amount.
- t) That there is an inordinate delay of more than 6 years calculated from the due date of possession upto August, 2022 and till date basic requirements including handing over of possession after allotment of specific unit and execution of the agreement has not been completed due to default of respondent no.1. The said failure is not attributable to any circumstance except the deliberate lethargy, negligence and unfair trade practices adopted by the respondent/promoter no.1. The respondent no.1 has been brushing aside all the requisite norms and stipulations and has accumulated huge amount of hard-earned money of various buyers in the project including the complainant and are unconcerned about handing over the possession of the unit despite repeated assurances.

- u) That the respondents have misused and converted to their own use the huge hard-earned amounts received from the complainant and other buyers in the project in a totally illegal and unprofessional manner and the respondents were least bothered about the timely finishing of the project and delivery of possession of the unit in question to the complainant as per the terms of allotment. The respondents have deliberately, mischievously, dishonestly and with malafide motives cheated and defrauded the complainant. It is pertinent to mention herein that the respondent no.1 has already got the project in question registered bearing registration no. 376/2017 dated 07.12.2017. A bare perusal of the documents and information supplied by respondent no.1 at the time of registration reveals that the Occupation Certificate of the project in question was obtained on 06.09.2019. However, the first time an offer of possession of an unspecified unit was made was only vide letter dated 30.03.2021. The said act of respondent no.1 is a violation of Section 19(10) of the Real Estate (Regulation and Development) Act, 2016.
- v) That moreover, a bare perusal of the information supplied by respondent no.1 at the time of registration further reconfirms the fact that the Environment clearance of the project was granted on 12.07.2013 and a general date to handover the possession in the project has been mentioned as 20.11.2018. The said registration certificate obtained by respondent no.1 from the Authority has already expired and the same has not been got renewed by respondent no.1 which again is a violation of Act, 2016. Thus, it is clear that respondent no.1 has acted not only in contravention to the mutually agreed terms of the MOU but also Act, 2016. Although the date of building plan approval is not specifically known to the complainant, the due date to handover the possession was, in any case, on or before the 12.07.2016 i.e., by computing the same from the date of

environment clearance. A direction is required to be given to respondent no.1 under Section 35 of the Act, 2016 to submit the building plans which were approved on or before 12.07.2013.

- w) That the complainant has been duped of his hard-earned money paid to respondent no.1 regarding the unit in question. The complainant requested the respondent no.1 to hand over the possession of the allotted unit to him but the respondent no.1 has been dilly-dallying the matter. The complainant has been running from pillar to post and has been mentally and financially harassed by the conduct of the respondents.
- x) That the respondents by adopting unfair trade practices, misuse of funds, failed to complete the construction of the unit allotted to the complainant as well as the other allottees. The respondents have extracted sale consideration of the unit from the complainant as well as from other allottees and miserably failed to allot a unit and handover the possession.
- y) That the respondents have misappropriated and siphoned the funds of the complainant and by doing so, cheated the complainant. The complainant had trusted the respondents with a dream to have a unit to himself and his family and have a secured life but the respondents have breached the trust of the complainant and snatched away such dream and also caused huge financial losses to the complainant and his family. The dream of the complainant has been shattered by the respondents.
- z) That the respondents are enjoying the valuable amount of consideration paid by the complainant out of his hard earned money and the complainant realizing the same demanded delayed possession charges from the respondents/promoters. But a week ago, the respondents have in complete defiance of their obligations refused to hand over the possession to the complainant along with

delayed possession charges and assured return leaving him with no other option but to file the present complaint. Since respondents miserably failed in their obligations, hence the complainant is entitled to delayed possession charges at the rate prescribed as per the Act, 2016 and Rules, 2017.

C. Relief sought by the complainant

4. The complainant has sought the following relief(s):
 - i. Direct the respondent to pay interest for every month of delay at prevailing rate of interest from 12.07.2016 till actual handing of the possession.
 - ii. Direct the respondent no.1 to allot a proper unit number and execute a BBA with the complainant.
 - iii. Direct the respondent no.1 to handover the possession of the unit to the complainant.
 - iv. Direct the respondent no.1 to re-issue the offer of possession omitting the demands not payable by the complainant as per the terms of the allotment.
 - v. Direct the respondent no.1 to give assured return from October 2018 till the valid offer of possession along with interest @18% p.a.
 - vi. Direct the respondent no.1 to refund back the labour cess amount charged from the complainant.
 - vii. Direct the respondent no.1 to execute conveyance deed as per Section 17 of the Act, 2016.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

- a) That the complaint filed by the complainant is baseless, vexatious and is not tenable in the eyes of law therefore the complaint deserves to be dismissed at the very threshold. The complaint is liable to be dismissed in view of the preliminary objections set out hereinafter. Since the preliminary objections are of a jurisdictional nature which goes to the root of the matter, and as per the settled law, the same should be decided in the first instance. It is only after

deciding the question relating to maintainability of the complaint that the matter is to be proceeded with further. The following preliminary and jurisdictional objections are being raised for dismissal of the complaint.

- b) That the development and other rights of the IT Park project "Spectrum one was with the M/s. Splendor Landbase Ltd. i.e., respondent no.2 upto 15.10.2012. Thereafter, respondent no.1 "Splendor Buildwell Pvt. Ltd.' had succeeded to all rights, interests and obligations of respondent no.2 i.e., M/s. Splendor Landbase Ltd. in the said project. The amount paid by the complainant to respondent no.2 (M/s. Splendor Landbase Ltd), had accordingly been transferred to respondent No.1 (M/s. Splendor Buildwell Pvt. Ltd.) All this was duly informed to the complainant vide Letter dated 04.10.2012 sent by respondent no.2 (M/s. Splendor Landbase Ltd.) and letter dated 27.10.2012 sent by respondent no.1 (M/s. Splendor Buildwell Pvt. Ltd) which was duly accepted by the complainant. Since respondent no.1 has succeeded to all rights, interests and obligations of respondent no.2 in the said project and the amount paid by the complainant to respondent no.2 had accordingly been transferred to respondent no.1, the complainant herein no longer has any privity of contract with the respondent no.2. Post issuance of letter dated aforesaid letter dated 27.10.2012, the complainant has been making correspondence with respondent no.1 only and has received assured return for all this period for a period of more than six years from respondent no.1 only. All the reliefs are being sought by the complainant in the present complaint is from respondent no.1 only. In fact, the complainant has wrongly included the respondent no.2 in the array of parties. The complaint under reply is liable to be dismissed in limine on account of mis-joinder of parties.

- c) That the complainant, in the present case is seeking relief claiming assured returns and assured rentals along with other reliefs as per the MOU executed between the parties. The complainant has failed to establish any violation of the RERA Act, 2016 and thus the present complaint needs to be dismissed at the very threshold.
- d) That the complainant is praying for the relief of "assured returns" which is beyond the jurisdiction that the Authority has been dressed with. From the bare perusal of the RERA Act, 2016 it is clear that the said Act provides for three kinds of remedies in case of any dispute between a developer and allottee with respect to the development of the project as per the agreement. Such remedies are provided under Section 18 of the RERA Act, 2016 for violation of any provision of the RERA Act, 2016. The said remedies are of "Refund" in case the allottee wants to withdraw from the project and the other being "interest for delay of every month" in case the allottee wants to continue in the project and the last one is for compensation for the loss occurred by the allottee. Nowhere in the said provision has the Authority been dressed with jurisdiction to grant "assured returns".
- e) The said order dated 29.09.2022 was challenged by the allottee before the Hon'ble Allahabad High Court in second appeal RERA appeal no. 86 of 2022 and the Hon'ble Allahabad High Court vide order dated 12.01.2023 was pleased to issue notice returnable at an early date. However, the operation of the impugned order was not stayed by the Hon'ble High Court. The question of law *inter-alia* as to whether the Central Government prohibited the scheme of the assured return by bringing "The Banning of Unregulated Deposit Scheme Act, 2019" is also pending now before Hon'ble High Court of Allahabad in above said RERA appeal.

- f) Thus, from the order cited hereinabove it is absolutely clear that the Authority does not have the jurisdiction to adjudicate upon the issues relating to provisions of assured return/assured rental, in the agreement entered into between the parties for sell and purchase of unit in a real estate project.
- g) That as per the MOU, the complainant was paid assured return amounting to Rs. 18,81,000/- for a period of more than 7 years 5 months. Vide letter dated 10.11.2016 the respondent had informed the complainant that due to unprecedented national situation created due to demonetization by the government, the respondent shall not be able to honour the cheques issued for assured return for that point of time. The complainant never objected to the same. Further, in view of the mutual understanding between the parties, the complainant had voluntarily decided to forego his assured return for the month of October 2018 amounting to Rs. 27,500/- vide letter dated 12.08.2019.
- h) Without prejudice to the submissions made hereinabove, it is in the humble submission of the respondent that the Banning of Unregulated Deposit Scheme Act, 2019 was notified by the Government of India on 31.07.2019 effective from 21.02.2019. As a consequence of the above, the assured return linked to sale consideration and the assured rental linked to leasing arrangement as contemplated under the said MOU falls under the ambit of deposit and the same falls under the ambit of unregulated deposit scheme. In pursuant to the provisions of Section 3 of the BUDS Act, all unregulated deposit schemes have been barred and all such transactions which falls under the ambit of unregulated deposit schemes have to be stopped. As such, in terms of clause 21 of the said MOU, all such provisions of the said MOU are void, illegal and unenforceable under the BUDS Act, 2019. Accordingly, clause 4,8,9 and all other similar clauses of the said MOU, to the extent inconsistent with the provisions of the said Act,

have become void, illegal and unenforceable and shall be deemed to be deleted so as to conform to applicable laws, without any liability on either party.

- i) That the definition of "deposit", as provided in the BUDS Act, bars the respondent from making any payment towards assured return or assured rental linked with sale consideration of an immovable property to its allottees after the enactment of the BUDS Act. The assured returns or assured rentals paid by the respondent to its allottees, which is linked with sale consideration of an immovable property under the said agreement, clearly attracts the definition of "deposit" and falls under the ambit of "Unregulated Deposit Scheme". Thus, the respondent was barred under Section 3 of BUDS Act from making any payment towards assured return in pursuance to an "unregulated deposit scheme". Section 2(17) defines "unregulated deposit scheme", which are not a regulated deposit scheme as specified under column 3 of the first schedule and as such the scheme, which has been entered between the complainant and the respondent is an unregulated deposit scheme, known as investment return plan, and has not been regulated or approved by the authorities as defined in the third column of first schedule, hence, is banned in law. The complainant cannot under the garb of said MOU seek enforcement or specific performance of an investment return scheme before the Hon'ble Tribunal, which is specifically barred and banned under Section 3 of The BUDS Act, hence the present complaint deems dismissal.
- j) That it is reiterated that the issues so raised in this complaint are not only baseless but also demonstrates an attempt to arm twist the respondent into succumbing to the pressure so created by the complainant in filing this complaint before the Authority and seeking the reliefs which the complainant is not entitled to raise before the Authority.

- k) That the present claim qua enforcement of the terms of the said MOU qua assured returns and assured rentals is liable to be dismissed for the reason that the Authority cannot adjudicate over the subject matter of the assured returns/rentals in as much as the same is an aspect/facet out of the many related/incidental aspects covered under the BUDS Act. As a necessary corollary, an order/decision on the subject matter falling within the realms of the BUDS Act, would not only amount to exercise of arbitrary and excessive jurisdiction by the Hon'ble Tribunal, but such action would also be unsustainable in the eyes of law. It is imperative to mention here that Section 8 of the BUDS Act provides that the appropriate Government shall, with the concurrence of the Chief Justice of the concerned High Court by notification, constitute one or more Courts known as the designated courts for such area or areas or such case or cases, as may be specified in such notification, which shall be presided over by a Judge not below the rank of a District and Sessions Judge or Additional District and Sessions Judge. Pertinently, Section 8(2) of the BUDS Act provides that no court other than the designated court shall have jurisdiction in respect of any matter to which the provisions of the BUDS Act apply.
- l) That the lis/question of law going to the root of the matter i.e., interalia 1) jurisdiction of any other Authority except the competent authority under Section 7 of the Banking of Unregulated Deposits Schemes Act, 2019; 2) whether the Courts, Statutory Authorities, Tribunals etc., have acted arbitrarily in entertaining and passing orders with respect to the assured returns and whether the same amounts to coercion to do an act against the mandate of Act of Parliament till the clarity regarding the ambiguity in the definition of deposits is obtained from the competent authority, is pending adjudication before the Hon'ble High Court of Punjab and Haryana in **CWP No. 26740 of 2022** titled as

"Vatika Ltd. vs. Union of Inida & Anr". The next date in the above writ petition is 16.08.2023 and the interim order dated 22.11.2022 stands extended till the next date.

- m) That the Authority after the above said order dated 18.05.2023 passed by the Hon'ble Haryana Real Estate Appellate Authority has also adjourned various similar matters and placed the same before the full bench.
- n) That similar question of law including whether the central government prohibited the scheme of the assured return by bringing an ordinance in the year 2018 in view of Placitum 2 of the first schedule of the "The Banning of Unregulated Deposit Scheme Act, 2019 is also pending before the Hon'ble Allahabad High Court in RERA Appeal No. 86 of 2022, which appeal has been filed against aforesaid order dated 29.09.2022 passed by the Hon'ble Uttar Pradesh Real Estate Appellate Tribunal, Lucknow in appeal no. 211/2022 titled as **Meena Gupta vs. One Place Infrastructure Pvt. Ltd.** wherein the Hon'ble Appellate Tribunal while dealing with the issue pertaining to grant of assured return under RERA Act, 2016 was pleased to uphold the order dated 08.02.2022 passed by the Ld. Uttar Pradesh Real Estate Regulatory Authority in Complaint No. IKO162/02/71115/2021 in which the Ld. Authority had dismissed complaint filed before it seeking payment of assured return on the ground of non-maintainability of the complaint. The Hon'ble Allahabad High Court in the RERA Appeal No. 86 of 2022 vide order dated 12.01.2023 was pleased to issue notice returnable at an early date. However, the operation of the impugned order passed by the Ld. Appellate Tribunal was not stayed by the Hon'ble High Court.
- o) The present complaint is liable to be rejected as the present transaction between the complainant and the respondent falls under Section 57 of the Indian Contract Act, 1872 ("**Contract Act**"). It is stated that on a closer scrutiny of Section 57 of

the Contract Act, it is established that the enactment of BUDS Act falls within the "specified circumstances", which renders the said MOU null and void. Thus, by no stretch of imagination, Authority or Court or Tribunal can enforce or compel any party to perform their alleged obligations under a void agreement. The specific performance of the assured return or assured rental cannot be prayed especially in view of clause 21 of the said MOU, which is a prospective clause, making the terminated MOU, in its nature, determinable.

- p) That the operation of clause 4 of the MoU is illegal, inoperative and hit by Section 10 read with Section 23 of the Contract Act, 1872. Section 23 of the Contract Act makes every contract void which is unenforceable.
- q) That Section 56 of the Indian Contract Act, 1872 further provides for a situation where due to a supervening impossibility or illegality of the act agreed to be contractually done, becomes impossible to perform. The present situation squarely falls within the ambit of Section 56 as the agreement between the parties to provide assured return and thereafter assured rental became illegal as well as punishable upon the notification of the Banning of Unregulated Deposit Scheme Act, 2019. Pertinently, Section 3 of the Act of 2019 also bans continuing the operation of existing schemes. Thus, the respondent no.1 is prohibited from paying any amount to the Defendant by virtue of the Act, 2019. Furthermore, Section 65 of the Indian Contract Act, 1872 allows a party to a contract which later becomes void to claim restitution of the benefit received by the other party but as a show of goodwill, the complainant herein is not seeking any restitution from the respondent.
- r) That without prejudice to what is stated above, the respondent is completely restrained from making any payment of assured return in terms of the said MOU

to the complainant in view of the bar under Section 14(d) of the Specific Relief Act, 1963.

- s) The complainant along with co-applicant Mr. Atul Aggarwal made an application for provisional allotment of an office space in the Cyber/IT Park developed by the respondent known as "Spectrum One" vide an application form dated 13.04.2011. Memorandum of Understanding was executed with the complainant and the co-allottee Mr. Atul Aggarwal for provisional allotment of space admeasuring 500 sq. ft on investment return plan in the proposed IT park project of the respondent. The said MOU dated 13.04.2011 was executed determining all the rights and liabilities of the parties.
- t) As per the Memorandum of Understanding the basic price of the provisionally allotted unit for an area admeasuring 500 sq.ft. was Rs. 20,00,000/- exclusive of other charges as may be levied in respect of the said unit. The complainant made payments amounting to Rs. 23,02,500/- (inclusive of Rs. 51,500/- paid towards service tax and Rs. 2,51,000/- paid towards EDC/IDC and VAT). However, in addition to the above additional cost the complainant in terms of clause 15, 16, 17 and 18 of the MOU is also liable to make other payments in the nature of Electric connection charges, electricity energization cost, charges for necessary equipment, installations, proportionate charges applicable on the unit in view of changed statutory requirements as also due to change in normal practices, conventions and standards. The complainant is further liable to pay all the applicable taxes, levies or charges to the said unit or the said project after the execution of the MOU, and during the course of protection of the project and thereafter, parking space charges, Maintenance charges, Interest Free Maintenance Security, assets replenishment fund, service tax and such other levies/cesses /VAT/labour cess as per the demands raised by the respondent.

- u) The development and other rights of the said project were with the M/s. Splendor Landbase Ltd. i.e., respondent no.2 upto 15.10.2012. Thereafter, respondent no.1 'Splendor Buildwell Pvt. Ltd.' had succeeded to all rights, interests and obligations of respondent no.2 i.e., M/s. Splendor Landbase Ltd. in the said project. The amount paid by the complainant to respondent no.2 (M/s. Splendor Landbase Ltd), had accordingly been transferred to respondent no.1 (M/s. Splendor Buildwell Pvt. Ltd.) All this was duly informed to the complainant vide letter dated 04.10.2012 sent by respondent no.2 (M/s. Splendor Landbase Ltd.) and letter dated 27.10.2012 sent by respondent No.1 (M/s. Splendor Buildwell Pvt. Ltd). Since respondent no.1 has succeeded to all rights, interests and obligations of respondent no.2 in the said project and the amount paid by the complainant to respondent no.2 had accordingly been transferred to respondent no.1, the complainant herein no longer has any privity of contract with the respondent no.2. In fact, the complainant has wrongly included the respondent no.2 in the array of parties. The complaint under reply is liable to be dismissed in limine on account of mis-joinder of parties.
- v) In terms of clause 4 of the MOU, the complainant was entitled to the benefit of assured return. As per said clause 4 of the MOU, it was agreed that the respondent would pay an assured return at the rate of Rs. 55/- per sq.ft of the super area from 15.04.2011 till offer of possession of the space. It was also agreed that the respondent would pay an assured return at the rate of Rs. 45/- per sq.ft. per month till the offered space is leased out to intended lessee. The respondent has paid assured return to the tune of Rs. 18,81,000/- to the complainant for a period of 7 years 5 months. Further, in view of the mutual understanding between the parties, the complainant had voluntarily decided to

forego his assured return for the month of October 2018 amounting to Rs.27,500/- vide letter dated 12.08.2019.

- w) That the assured return payable for the year 2018-2019 cannot be claimed as the same is barred by limitation being a financial debt. The complainant has approached the Authority after a period of more than 4 years for the alleged recovery of assured returns hence the present complaint is barred by limitation.
- x) That the respondent issued a letter dated 13.02.2018 to the complainant informing him that the construction of the project is on completion stage. The respondent after completing the construction in September 2018 had applied for the issuance of Occupation Certificate in the office of the Director General, Town & Country Planning Department, Haryana in November 2018. The OC was granted on 06.09.2019 after due verification and inspection. As per clause 4 of the MOU executed between the parties, the possession was to be offered within three years after approval of building plans and after receipt of completion certificate. It is also pertinent to mention herein that time was not the essence of the contract as the complainant was entitled to assured return. The very inclusion of such a clause in the MOU goes a step further in illustrating the fact that the complainant very well knew and understood the implication of the terms of the MOU having a buffer/protection of payment of assured return. Further, under clause 7 (h) of the MOU the complainant had waived off his right of physical possession.
- y) That in the present case as per the clauses of the MOU, the said space/unit was not for the purpose of self-occupancy and hence the question of offer of possession does not arise. It is submitted that as per clauses of the said MOU, it was agreed between the parties that the said unit is not for the purpose of self-occupation and use by the complainant and it is for the purpose of leasing to

third parties along with combined Units as larger area. It is for this reason that the complainant under clause 5 of the MOU had authorised the respondent to negotiate, finalise, effectuate, and inter- into lease deed and other requisite documents, agreements, and deeds in respect of the said unit with any suitable and prospective tenant. The complainant had further agreed that he shall neither claim the sub division in the said unit nor shall claim the physical possession of the Said Unit till the expiry of first lease or renewal thereof. After receipt of the Occupancy Certificate of the said project, since the complainant had waived off its right of physical possession under clause 7(h) of the MOU, the respondent initiated talks with the prospective tenants to lease out the said unit, under the authority of the complainant in terms of the said MOU, however, due to slump in real estate market, distressed market condition, very low demand and hostile market scenario due to COVID-19 pandemic, trend of work from home, all these factors lead to acute shrinkage of absorption of commercial/IT space due to which leasing out the area as was contemplated in the said MOU could not materialize. The complainant was fully aware of the above position.

- z) That since the due date of completion and handover of possession of the said unit was after the receipt of Completion Certificate, the respondent in continuation of its earlier communications and meeting held with the complainant during which the complainant was informed about completion of the said building and receipt of OC, vide letter dated 25.02.2021 informed the complainants about completion and receipt of Occupancy Certificate for the said project. The respondent vide letter dated 25.02.2021 requested the complainant to take possession and get the conveyance deed of the said unit registered, besides offering possession to the complainant, the respondent herein also again expressed its readiness and willingness to execute the conveyance deed

transferring the title, right and interest in favour of the complainant herein upon clearing of the outstanding dues by the complainant. In addition to the basic consideration, the complainant in terms of clause 15, 16, 17 and 18 of the MOU is also liable to make other payments in the nature of electric connection charges, electricity energization cost, charges for necessary equipment, installations, proportionate charges applicable on the unit in view of changed statutory requirements as also due to change in normal practices, conventions and standards. The complainant is further liable to pay all the applicable taxes, levies or charges to the said unit or the said project after the execution of the MOU, and during the course of protection of the project and thereafter, parking space charges, maintenance charges, interest free maintenance security, assets replenishment fund, service tax and such other levies/cesses /VAT/ labour cess as per the demands raised by the respondent.

- aa) That vide offer of possession letter dated 25.02.2021, the complainant was requested to visit the office of the respondent for settlement of accounts and thereafter they will be required to pay the outstanding amount in terms of the said MOU, complete all the requisite formalities, execute and get registered the conveyance deed and take legal physical possession of the said units.
- bb) That even after the issuance of the letter dated 25.02.2021 the complainant failed to remit the outstanding dues and start the process of execution of conveyance deed and take possession of the unit, as a result of which the complainant issued reminder letter dated 30.03.2021 to the complainant requesting him to clear his outstanding dues to the tune of Rs.18,46,113/- along with Rs. 50,000/- towards interest free maintenance security deposit and take possession of the unit. Further, it was also intimated to the complainant

regarding recent statutory enactment and that the respondent was under no obligation to pay the assured returns to the complainant.

- cc) That even after the issuance of the letter dated 30.03.2021 the complainants failed to remit the outstanding dues and start the process of execution of conveyance deed and take possession of the said unit. The complainant has failed to get the conveyance deed registered and take possession of the said Units, hence, the complainant is deemed to have taken possession of the said Units for the purposes of maintenance etc. in terms of the said MOU. The respondent also raised various demands monthly towards common area maintenance charges which the complainant is liable to pay as per the MOU, but the complainant failed to pay a single penny towards the same.
- dd) That on account of the willful breach of the terms of the MOU by failing to clear the outstanding dues despite repeated requests and take possession of the said unit, the complainant is not entitled to any relief from the Authority. The construction of the project has been completed without any delay and the offer of possession stands offered to the complainant and it is he who is not coming forward to clear his outstanding dues and get the conveyance deed registered. The default of the complainant in making the payment towards the amount due amounts to default as per the MOU. The complainant, thus as an attempt to avoid the consequences of the breach of the MOU has filed the present malafide complaint and thereby in essence, the quashing of the terms and conditions of the MOU. The respondent is acting as per the terms and conditions of the MOU executed between the parties.
- ee) That the failure of the complainant to make payment of outstanding amounts in terms of the said agreement and get the conveyance deed registered transpired that the complainant is in clearly in breach of his reciprocal promises to be

performed as laid down in the said MOU. Thus, the complainant is clearly in breach of Section 51 of the Indian Contract Act, which provides that when a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

- ff) When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise. It is thus transpiring that since the complainant has failed to perform his reciprocal promise under the MOU, hence the Respondent is not bound to perform its promise.
- gg) That in the present case, the complainant has failed to bring to the notice of this Hon'ble Authority that it was in fact the complainant who is a defaulter and was in arrears for payment of balance basics sale consideration and other dues and charges as per said MOU for which reminder was sent to him.
- hh) That in view of the above, the complainant is liable to make a payment of Rs.18,46,113/- along with Rs. 50,000/- towards interest free maintenance security deposit in terms of the MOU dated 13.04.2011. Moreso, no tenant will pay the lease rental to the complainant, as sought by the complainant in the present complaint, unless the complainant becomes the owner of the said unit by way of registered conveyance deed.
- ii) That being totally aware about the payment as per the payment plan and the MOU, the complainant intentionally failed to make payments towards the due amount and therefore is a defaulter and is liable to pay interest to the respondent for the delay in payment under Section 19(6) RERA which states that the complainant is responsible to make necessary payments in the manner and

within time as specified in the agreement and in case of default the complainant is liable to pay interest for delay under Section 19(7) of Act, 2016.

- jj) That the respondent is entitled to compensation from the complainant for the losses and damages in consequence of the non-performance of the said MOU by the complainant and various acts of commissions and omissions committed by the complainant and the respondent has reserved its rights to initiate necessary proceedings against the complainant for same.
 - kk) That the respondent had offered the execution of conveyance deed and possession of the units allotted to the complainant, all of which have been refused by the complainant as they are only interested in arm twisting the respondent to continue receiving assured rentals. It is settled that a commercial contract of like nature cannot be in perpetuity and has to come to an end.
 - ll) That the complainant has not approached this Hon'ble Authority with clean hands. The complainant is attempting to raise non issues and is now, at a belated stage, attempting to seek a modification of the MOU entered into between the parties in order to acquire benefits for which the Complainant is not entitled in the least.
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 submission made by the parties.

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.

F.I Territorial jurisdiction

8. 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 purposes 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 a complete territorial jurisdiction to deal with the present complaint.

F.II Subject matter jurisdiction

9. 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) 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 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.

10. 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 relief sought by the complainant

F.I Direct the respondent to pay delayed possession charges for every month of delay at prevailing rate of interest from 12.07.2016 till actual handing of the possession.

F.II Direct the respondent no.1 to give assured return from October 2018 till the valid offer of possession along with interest@18%.

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

12. The factual matrix of the case reveals that the complainant applied for booking of a unit in the project "Spectrum One" and was allotted space vide memorandum of

understanding (MOU) dated 13.04.2011. However, the builder buyer agreement was not executed between the parties. The sale consideration of the unit was Rs.23,03,000/- against which the complainant has paid an amount of Rs.20,00,000/-. Moreover, pursuant to clause 4 of memorandum of understanding, the developer will pay Rs.55/- per month on 500 sq.ft. an assured return to the allottee from 15th April 2011 till offer for possession of the space. Thereafter, the developer shall pay Rs. 45/- per sq.ft. per month on 500 sq.ft. as assured rental till the offered space is leased out to intended lessee. Occupation certificate for the said project has been obtained by the respondent from the competent authority on 06.09.2019 and offer of possession has also been made to the complainant-allottee on 30.03.2021. The common issues with regard to assured return and delay possession charges are involved in the aforesaid complaint.

13. The complainant intends to continue with the project and is seeking delay possession charges at a prescribed rate of interest on the amount already paid by him as provided under the proviso to Section 18(1) of the Act, which reads as under:-

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

14. Clause 4 of the MoU provides for handing over of possession and is reproduced below:

"The developer has represented to the allottee that the possession of the said unit shall be handed over by the developer within a period of 3 years after approval of building plans of the said project from the competent authorities

15. The due date of possession had to be calculated from the date of environment clearance as the date of building plan is not provided any of the parties. Therefore, the due date is calculated from the date of environment clearance i.e., 12.07.2013. Accordingly, the due date of possession comes out to be 12.07.2016.

16. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges till the date of delivery of possession to the complainant. Proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under Rule 15 of the Rules, *ibid*. Rule 15 has been reproduced as under:

"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(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."

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

18. 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., 22.07.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

19. 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;”*

20. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10 % by the respondent which is the same as is being granted to them in case of delayed possession charges.

21. On consideration of documents available on record and submissions made by the complainant and the respondent, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be completed within a stipulated time i.e., by 12.07.2016.

22. However now, the proposition before it is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges?

23. To answer the above proposition, it is worthwhile to consider that the assured return in this case is payable as per “memorandum of understanding (MOU)”. The rate at which assured return has been committed by the promoter is Rs.55/- per sq. ft. of the super area per month till offer for possession of the space. If we compare this assured return with delayed possession charges payable under proviso to Section 18(1) of the Act, 2016, the assured return is much better i.e., assured return in this case is payable at Rs.27,500/- per month till offer for possession whereas the delayed possession charges are payable approximately

Rs.21,302/- per month. By way of assured return, the promoter has assured the allottee that they would be entitled for this specific amount i.e., Rs.27,500/- till offer for possession of the space i.e., 30.03.2021. The purpose of delayed 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 their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges whichever is higher.

24. Accordingly, the Authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under Section 18 and assured return is payable even after due date of possession till offer of possession, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.
25. On consideration of the documents available on the record and submissions made by the parties, the complainant has sought the amount of unpaid amount of assured return as per the MOU executed between the parties. The promoter had agreed to pay to the complainant-allottees Rs.55/- per sq. ft. on monthly basis from 15th April 2011 i.e., till offer for possession. It is matter of record that the amount of assured return was paid by the respondent promoter till September 2018 but later on, the respondent 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.
26. Therefore, considering the facts of the present case, the respondent is obligated to pay the amount of assured return at the agreed rate i.e., @ Rs.55/- per sq. ft. per

month from the date the payment of assured return has not been made i.e., September 2018 till offer of possession i.e., 30.03.2021.

27. The respondent is obligated 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.
28. Further, as per Clause 4 of the said MoU dated 13.04.2011, the developer after the payment of aforesaid assured return, also agreed to pay further assured return to the complainant-allottee until the offered space is leased out to the intending lessee. However, by way of filing the present complaint, the complainant has sought the relief of possession of the unit allotted to him. Further, during the proceedings held on 20.02.2024, the counsel for the respondent stated that possession of unit no. 525, 5th Floor, Tower D, has already been offered to the complainant. In furtherance of the same, during the proceedings held on 22.04.2025, the counsel for the complainant requested for handing over of physical possession of the unit being allotted to him. Therefore, after requesting for the physical possession of the unit, the complainant is not entitled to relief of assured rentals beyond the date when offer of possession was made to the complainant, i.e., post 30.03.2021.

F.III Direct the respondent no.1 to handover the possession of the unit to the complainant.

29. In the present complaint, the grievance of the complainant is that the physical possession has not been handed over by the respondent to the complainant. The Authority observes that the respondent-promoter has obtained Occupation Certificate of the said project from the competent authority on 06.09.2019 and offered possession to the complainant on 30.03.2021.

30. In view of the above, the respondent is obligated to handover the possession of allotted unit to the complainant as per specifications of memorandum of understanding entered between the parties on 15.12.2012 as the Occupation Certificate for the project has already been obtained by it from the competent Authority.

F.IV Direct the respondent no.1 to refund back the labour cess amount charges from the complainant.

31. The complainant pleaded in the complaint that the respondent/builder has demanded a charge of Rs. 9,075/- on pretext of labour cess vide notice of possession 30.03.2021 which is illegal and unjustifiable and not tenable in the eyes of law. In reply to this the respondent submitted that all the final demand raised by the respondent are justifiable and complainant choose to ignore and not pay the same. It is pertinent to mention here that the respondent vide offer of possession letter raised labour cess charge @18.15 sq.ft. totalling to the amount of Rs 9,075/- on perusal of the MoU signed between both the parties it can be inferred that the agreement contains no such clause as to payment of labour cess charges whereas other charges/demands raised by the respondent /builder are clearly outlined in the MoU therefore, the complainant is not liable to pay the labour cess charges as the demand of labour cess charges raised by the respondent is unjustifiable from the allottee and the respondent/builder is himself liable to pay the labour cess charges. The respondent be directed to withdraw the unjustified demand of the pretext of labour cess. The builder is supposed to pay a cess from the welfare of the labour employed at the site of construction and which goes to welfare boards to undertake social security schemes and welfare measure for building and other construction workers.

32. Moreover, this issue has already been dealt with by the authority in complaint bearing no.962 of 2019 titled **Mr. Sumit Kumar Gupta and Anr. Vs Sepset**

Properties Private Limited wherein it was held that since labour cess is to be paid by the respondent, as such no labour cess should be charged by the respondent. The authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, the demand of labour cess raised upon the complainant is completely arbitrary and the complainant cannot be made liable to pay any labour cess to the respondent and it is the respondent builder who is solely responsible for the disbursement of said amount.

F.V Direct the respondent no.1 to allot a proper unit number and execute a RERA-complaint builder buyer agreement with the complainant.

F.VI Direct the respondent no.1 to execute conveyance deed as per Section 17 of the Act, 2016

33. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
34. As far as relief of execution of Space Buyer Agreement is concerned, this Authority is of the view that there is an MoU which already stands executed inter se parties on 13.04.2011 and the said MoU contains clauses that clearly contains the terms and conditions agreed inter se. Herein, the grievance of the complainant pertains to allocation of proper unit no. as the said MoU dated 13.04.2011 does not bear any details pertaining to the unit allotted to the complainant like unit number or floor or tower.
35. During proceeding dated 20.02.2024, the counsel for the respondent states that the unit number 525, 5th floor, tower D has been allotted to the complainant and the same was not objected to by the complainant. Therefore, the Authority is of the view that unit number 525, 5th floor, tower D was allotted to the complainant vide MOU dated 13.04.2011.
36. Further, as far as execution of the conveyance deed is concerned, clause 14 of the MoU is relevant wherein it has been clearly mentioned that the developer will

execute the sale deed in favour of the intending allottee after receiving full consideration in respect of the subject unit along with other charges and receipt of completion certificate of the project from the competent authority.

37. Furthermore, Section 17 (1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

“17. Transfer of title.-

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment or building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.”

38. The authority observes that OC in respect of the project where the unit bearing no. 525, 5th floor, tower D is situated has already been obtained by the respondent promoter. Hence, there is no reason to delay the conveyance deed of the subject unit. In view of above, the respondent shall execute the conveyance deed of the newly allotted unit within 90 days upon receipt of the payment of requisite stamp duty by the complainants as per norms of the state government.

G. Directions of the authority

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

- I. The respondent is directed to pay the amount of assured return at the agreed rate i.e., @ Rs.55/- per sq. ft. per month from the date the payment of assured

return has not been made i.e., October 2018 till offer of possession i.e., 30.03.2021

- II. 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.
 - III. The respondent is obligated to handover physical possession of allotted unit to the complainant as per specifications of memorandum of understanding entered between the parties on 13.04.2011.
 - IV. The respondent is not entitled to charge labour cess as it is the respondent builder who is solely responsible for the disbursement of said amount.
 - V. The respondent shall not charge anything from the complainant which is not part of the MoU executed between the parties on 13.04.2011.
40. The complaints stand disposed of.
41. File be consigned to the registry.



(Ashok Sangwan)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
22.07.2025