

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

Complaint no.: 4593 of 2021
Date of filing: 03.12.2021
Date of first hearing: 28.01.2022
Date of decision 22.07.2025

Ramesh Kumar Bajaj

R/o: - B-05/705, Sahara Grace, M.G. Road,
Gurugram-122002

Complainant

Versus

Splendor buildwell Pvt. Ltd.

Regd. Office at: - Splendor Forum, 5th floor,
plot-3, Jasola District Centre, New Delhi-
110025.

Respondent

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

**Chairman
Member**

APPEARANCE:

Mr. Garvit Gupta (Advocate)
Mr. Shriya Takkar & Ms. Meenal Khanna (Advocates)

**Complainant
Respondents**

ORDER

1. This complaint has been filed by the complainant-allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or

the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details.

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

S. N.	Particulars	Details
1.	Name of the project	"Spectrum One", Sector 58, Gurugram, Haryana
2.	Project area	6.775 acres
3.	Nature of the project	IT/Cyber Park
4.	DTCP license no. and validity status	82 of 2010 dated 12.10.2010 Valid up to 29.05.2020
5.	Name of licensee	Ishayu Builders and Developers Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. 376 of 2017 dated 07.12.2017 Valid up to 31.12.2018
7.	Unit no.	Not Mentioned
8.	Unit area admeasuring	5000 sq. ft. (Approx.) [Page 28 of complaint]
9.	Date of execution of BBA	Not Executed
10.	Date of execution of MOU	29.05.2014 (Page 19 of complaint)
11.	Possession clause	N/A
12.	Due date of possession	N/A
13.	Assured Return as per MoU	5. The Developer will pay Rs. 40/- per sq. ft. per month on 5000 sq. ft. as an

		<p>assured return to the Intending Allottee from 21 July 2014 till the completion of the Said Project.</p> <p>Thereafter the Developer shall pay Rs. 50/- per sq. ft. per month on 5000 sq. ft. as assured rental till the said Unit is leased out to the prospective Lessee(s).</p> <p>[page 21 of compliant]</p>
14.	Total Basic Consideration as per clause 2 of MOU	Rs. 1,25,00,000/- [page 21 of complaint]
15.	Total amount payable by the complainant	Rs.1,63,97,606/- (As per demand letter dated 01.07.2018 at page 34 of complaint)
16.	Amount paid by the complainant	<p>Rs.1,33,33,865 /-</p> <p>(As per demand letter dated 01.07.2018 at page 34 of complaint) To be clarified during hearing as respondent is claiming that complainant has paid Rs. 1,28,33,865/-</p>
17.	Buy Back option given to the complainant vide letter dated	03.08.2019 [Page 166 of reply]
18.	Occupation certificate /Completion certificate	06.09.2019 [page 154 of reply]
19.	Offer of possession	Not offered
20.	Assured return paid by the respondent	Rs. 1,00,70,967/- till September 2018 [page 12 of reply]
21.	Balance assured return payable to complainant as per MOU	Rs.24,29,033/- [pg. 3 of facts by respondent]

B. Facts of the complaint.

3. The complainant has made the following submissions by way of filing the present complaint dated 03.12.2021: -

- a) That on 20.05.2014, the complainant entered into a MoU with the respondent whereby the respondent allotted a commercial unit admeasuring 5000 sq.ft. super area to the complainant in the respondent's project situated in Sector 58 Gurugram by the name "SpectrumOne" under the "Assured return Plan".
- b) That the total basic sale consideration of the unit was stated as Rs. 1,25,00,000/-. The complainant paid Rs.1,28,33,865/- at the time of booking itself and the receipt of which was acknowledged in the MoU in clause 3 of the MoU.
- c) That the respondent vide clause 5 of the MoU undertook to pay an assured monthly return to the complainant @ Rs. 40/- per sq. ft. per month on 5000 sq. ft. as an assured return to the Intending Allottee from 21 July 2014 till the completion of the Said Project. Thereafter the Developer shall pay Rs. 50/- per sq. ft. per month on 5000 sq. ft. as assured rental till the said Unit is leased out to the prospective Lessee(s).
- d) That as per clause 22 and 23 of the MoU, the respondent was obligated to sign and execute the space buyer agreement. Till date, even after receiving an amount more than the basic sale consideration in the year 2014 itself, the respondent has failed to provide a space buyer agreement to the complainant. Several written as well as oral requests for execution of space buyer agreement were made by the complainant but all in vain.
- e) That as per the MoU, it was agreed that the unit will be constructed and would be handed over to the lessee directly as chosen by the respondent and that the allottee was not to use the unit for his own use. The copied of documents with respect to allotment were not shared with the

complainant. But, the unit number is clearly mentioned in the demand letters raised by the respondent, unit being SLL/Spectrumone/219. The respondent vide demand letter dated 10.12.2016, demanded Rs. 5,00,000/- as VAT @4%, the same was duly paid by the complainant. Later on 01.07.2018, raised another demand of Rs. 30,63,741/- on the complainant in the name of EDC/IDC and enhanced EDC/IDC without providing any explanation whatsoever. In response to the same, the complainant sent a written correspondence to the respondent seeking an explanation as to rate of calculation of the EDC/IDC. The complainant also pointed out in the said demand letter an interest for late payment has been mentioned as Rs.6,29,106/- which was incorrect as there had never been any late payment and therefore no such interest could be levied on the complainant.

- f) That respondent has failed in paying assured returns to the complainant since September 2018 onwards. The complainant made several correspondences to the respondent asking for the pending assured returns via post as well as email and in person. The complainant has visited the office of the respondent several times but all in vain.
- g) That on enquiring the complainant has been told by the respondent that the project is complete. Therefore, the complainant is entitled to not only the execution of the Space buyer agreement, sale deed, but also pending assured return payments of Rs. 2,00,000/- per month from 01.0.2018 till date of completion and assured rental returns of Rs.2,50,000/- per month till the said unit is leased out to the prospective lessee by the respondent.
- h) That no specific due date of handing over of possession/completion of construction was clearly mentioned in the MoU and therefore, the complainant humbly relief on the judgment of the Hon'ble Apex Court in

M/s Fortune Infrastructure & Anr. Versus Trevor Dlima & Ors., wherein it has held that “...Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the fact and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract...”. Accordingly, in the present case the due date of completion of construction can be inferred as 29.05.2017. Till date no space buyer agreement has been executed by the respondent and no sale deed has been made by the respondent. The complainant is therefore, compelled to this present complaint.

C. Relief sought by the complainant:

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

- I. Direct the respondent to pay interest for delay on the total amount paid by the complainant@ prescribed rate of interest for every month of delay, till the date of actual handing over of the possession of the unit.
- II. Direct the respondent to provide to the complainant the space buyer agreement and to execute the space buyer agreement and to execute the space buyer agreement and sale deed.
- III. Direct the respondent to pay pending assured return payments of Rs. 2,00,000/- per month from 01.09.2018 till the date of completion and assured rental returns of Rs. 2,50,000/- per month till the said unit is leased out to the prospective lessee by the respondent.
- IV. Direct the respondent to produce proof by completion of construction as alleged by respondent.
- V. Direct the respondent to reimburse the excess amount charged on account of VAT.

- VI. Direct the respondent to withdraw the illegal demand of the IDC/EDC at exorbitant rates as there has been no explanation provided for such exorbitant rates so mentioned in the demand letter.
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

6. The respondent has contested the complaint on the following grounds:
- a) That without prejudice to the aforementioned contentions it is stated that the complainant has approached the Authority with unclean hands and has tried to mislead the Authority by making incorrect and false averments and stating untrue and/or incomplete facts and, as such, is guilty of *suppressio very suggestion falsi*. The complainant has suppressed and/or mis-stated the facts and, as such, the complaint apart from being wholly misconceived is rather the abuse of the process of law. On this short ground alone, the complaint is liable to be dismissed.
 - b) 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.

- c) That the present complaint is liable to be dismissed solely on the ground of non-joinder of necessary party. The complainant had entered into a memorandum of understanding dated 29.05.2014 with the respondent in respect of office space in the IT Park project of the respondent by the name of 'Spectrum One' situated at Sector 58, Gurugram. However, by an agreement to sell dated 29.07.2020 the complainant herein sold the space allotted to him to M/S ANJ Real Estate Investments and had also received substantial payment/part consideration from them. By way of the said agreement to sell the complainant herein has transferred and conveyed all his rights, titles and interest in the said unit to M/S ANJ Real Estate Investments. Vide letter dated 30.07.2020 M/S ANJ Real Estate Investments informed the respondent regarding the execution of agreement to sale with the complainant herein and that with the execution of said agreement with Mr. Bajaj he has stepped into the shoes of the complainant. Since all the rights, titles and interest in the said unit have been transferred in the name of M/S ANJ Real Estate Investments, M/S ANJ Real Estate Investments is a necessary. Thus, the complaint is clearly defective in nature and is liable to be dismissed on the ground of non-joinder of necessary party.
- 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 Act, 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 the Authority has been dressed with jurisdiction to grant "assured returns".

- e) That as per the MOU, the complainant was paid assured return amounting to Rs. 1,00,70,967/- for continuous period of approximately 4 years (i.e. till September 2018). The respondent is thereafter not liable to pay any amount of assured return to the complainant. After completion of the building assured rental is payable. Every prospective lessee requires the leased premises to be free from all encumbrances and in the present case the said unit is not free from encumbrances as the complainant has sold the unit in question to M/S ANJ Real Estate Investments. As such the respondent is not liable to pay any amount of assured return to the complainant. Without prejudice to the what is stated herein above, it is in the humble submission of the respondent that the banning of Unregulated Deposit Scheme Act, 2019 (the "BUDS Act") 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. That as such, in terms of Clause 33 of the said MOU, all such provisions of the said MOU are void, illegal and unenforceable under the BUDS Act, 2019. Accordingly, clause 5, 17, 18 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.

- f) 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 immoveable property to its allottees after the enactment of the BUDS Act. It is stated that the assured returns or assured rentals paid by the Respondent to its allottees, which is linked with sale consideration of an immoveable 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 Schemes", 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 Claimant 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 this Hon'ble Tribunal, which is specifically barred and banned under Section 3 of The BUDS Act, hence the present complaint deems dismissal. Reliance in this regard is placed on the order dated on order dated 19.04.2022 passed by the Ld. District Court Gurugram in the matter titled as ***Naresh Prasad vs. M/s Vatika Ltd. and Anr.***

- g) That 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 no date of possession but having a buffer/protection of payment of assured return till completion of the building. Hence, now it doesn't lie in the mouth of the complainant to allege that there has been undue delay in the handing over of the possession. The present case needs to be dealt within the parameters of the clauses contained in the MOU that was executed between the parties by fully understanding the import of the contents of the MOU without any coercion, influence of undue pressure.
- h) 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.
- i) 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. 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.

- j) 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. 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, an 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 33 of the said MOU, which is a prospective clause, making the terminated MOU, in its nature, determinable.
- k) 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.
- l) That the Hon'ble Authority in the case of ***Geeta Rani vs. M/s. Landmark Apartments Pvt. Ltd. (Complaint No. 870/2018)*** and also had held that the issues of the matter had already been adjudged by the Authority in the order dated 07.08.2018 passed in complaint no. 141 of 2018 titled as ***Brhimjeet vs. M/S landmark Apartments Pvt. Ltd.*** in the above mentioned matter of ***Brhimjeet vs. M/s. Landmark Apartments Pvt. Ltd.***

it was held by this Hon'ble Authority that as per the MOU between the parties, the assured returns was not a formal clause with respect to giving or taking possession of the unit and that the Builder was not within the purview of the RERA Act. This Hon'ble Authority went on to further issue directions to the allottee in the case to file a case for assured returns before the appropriate forum.

- m) That the complainant 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 29.05.2014. Thereafter a Memorandum of Understanding was executed with the complainant for provisional allotment of space admeasuring 5,000 sq. ft on investment return plan in the proposed IT park project of the respondent. The said MOU dated 29.05.2014 was executed determining all the rights and liabilities of the parties. As per the Memorandum of Understanding the basic consideration of the provisionally allotted unit for an area admeasuring 5000 sq. ft. was Rs. 1,25,00,000/- exclusive of EDC/IDC, EEC, Interest Free Maintenance Security, Power Back up charges, Service Tax and such other levies/cessess/VAT as may be imposed by the any Statutory Authority and other dues and charges as applicable in respect of the said unit upon completion of the building. The complainant made payments amounting to Rs. 1,28,33,865/- (One Crore Twenty-Eight lakh Thirty Three Thousand Eight Hundred and Sixty Five only) (inclusive of service tax of Rs.4,63,500/-). However, in addition to the above additional cost the complainant was also liable to make other payments in the nature of EDC/IDC, EEC, Interest Free Maintenance Security (IFMS), Power Back up charges, service tax and such other levies/cessess /VAT/labour cess as per the demands raised by the Respondent.

- n) That 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. There was no time limit provided under the MOU for handing over the possession of the unit. Thus, time was not the essence of the contract for delivering the possession, however it was mutually agreed upon that the complainant would be entitled to the benefit of assured returns as per the MOU till completion of the building. The as per the terms of the MOU, it was agreed that the respondent would pay an assured return at the rate of Rs. 40/- per sq.ft of the super area from 21.07.2014 till the completion of the project. 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 no date of possession but having a buffer/protection of payment of assured return till completion of the building. As per clause 13 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. The complainant had further agreed that he shall neither claim the subdivision in the Said Unit nor shall claim the physical possession of the said unit till the expiry of first lease or renewal thereof. The respondent has already paid assured return to the tune of Rs. Rs. 1,00,70,967/- for a period of approximately 4 years in terms of clause 5 of the MOU. As per the terms of the MOU assured return was payable till the completion of construction. The respondent completed the construction and applied for the grant of OC in November 2018. As per the terms of the MOU the respondent has

duly discharged its obligation to pay assured return and is not liable to pay any further amount to the complainant for the reasons stated in the present reply.

- o) That the inability of the respondent to pay any further amount due to change in legislation was duly communicated to the complainant and the respondent no.1 is not liable to pay any amounts towards assured return to the complainant and the respondent cannot be expected to act contrary to the law of the land. Further, as stipulated under the MOU executed between the parties, the complainant in addition to the basic sales consideration, the complainant was also supposed to make other payments in accordance with clause 7, 8 and 9 of the MOU.
- p) That the complainant has made a payment of Rs.1,28,33,865/- till date including service tax of Rs.4,63,500/-. Further, an amount of Rs.15,34,635/- is pending at his end towards payment of EDC/IDC. It is submitted that despite the demand of EDC/IDC having been raised by the respondent, the complainant failed to come forward to clear his dues. It is submitted that as per clause 4 of the MOU timely payment was the essence of the MOU and the complainant was very well aware about the same. Since the complainant himself defaulted in making timely payment of the dues, hence the complainant is not entitled to any relief whatsoever.
- q) That further, the complainant herein had entered into a memorandum of understanding dated 29.05.2014 with the respondent in respect of office space in the IT Park project of the respondent by the name of 'Spectrum One' situated at Sector 58, Gurugram. However, by an agreement to sell dated 29.07.2020 the complainant herein sold the space allotted to him to M/S ANJ Real Estate Investments. By way of the said Agreement to Sell the

Complainant herein has transferred and conveyed all his rights, titles and interest in the said unit to M/S ANJ Real Estate Investments.

- r) That since the complainant has sold the unit in question to a third party even before filing of the present complaint, the complainant has no interest, right or title in the said unit and hence is entitled to no relief by the Authority. The complainant does not fall under within the definition of an allottee under the provisions of the Real Estate Regulation and Development Act, 2016 since he has sold/transferred his right in the said unit/space to M/S ANJ Real Estate Investments and therefore ceases to be an Allottee. It is submitted that since the complainant does not fall under the definition of the term allottee, the complainant has no locus to file the present complaint. The complaint filed by the complainant is thus liable to be dismissed on this ground alone and any claim if any can only be pursued by the subsequent allottee alone. The present complaint is infructuous and is liable to be dismissed on this ground alone.
- s) That in view of the change in legislation/new enactments regarding assured return and in view of Banning of Unregulated Deposit Scheme Act, 2019 the respondent vide letter dated 03.08.2019 the respondent had duly informed the complainant about the difficulties to perform/pay assured return as per the said MOU and offered to buy-back the unit of the complainant at the buy-back price of Rs.6,000/- per sq.ft. of super area, but the complainant refused to accept the same and had not even responded to the said letter which transpires that the complainant was well aware that due fresh enactments the respondent is not liable to pay any further amount of assured return to the complainant.
- t) That with regard to specific performance of the said MOU specifically pertaining to the assured return and assured rental to be paid by the

respondent to the complainant, the same relief cannot be granted because as per Section 14 (d) of The Specific Relief Act 1963, a contract which is in its nature determinable cannot be specifically enforced and under Section 41 of The Specific Relief Act, 1963 an injunction also cannot be granted to prevent a breach of a contract performance of which would not be specifically enforced. Thus, the terminated MOU cannot be specifically enforced as in its nature, it is determinable and since it becomes non-enforceable, an injunction also cannot be granted.

- u) That the present complaint is liable to be dismissed for the reason that specific performance of the assured return and assured rental cannot be prayed especially in view of clause 33 of the said MOU which is a prospective clause.
- v) That the present complaint is liable to be rejected as the present transaction between the complainant and the respondent fall under Section 57 of the Indian Contract Act, 1872. 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, a Court or Tribunal can enforce or pass any injunction by compelling 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 33 of the said MOU, which is a prospective clause, making the terminated MOU, in its nature, determinable.
- w) That the MOU was entered into between the parties and, as such, the parties are bound by the terms and conditions mentioned in the said MOU. The said MOU was duly signed by the complainant after properly understanding each and every clause contained in the MOU. The

complainant was neither forced nor influenced by the respondent to sign the said MOU. It was the complainant who after understanding the clauses signed the said MOU in his complete senses.

- x) That as per clause 5 of the MOU dated 29.05.2014 it was agreed that the respondent will pay an assured return at the rate of Rs. 40/- per sq.ft of the super area from 21.07.2014 till the completion of the project. It was also agreed that the respondent will pay an assured return at the rate of Rs.50/- per sq.ft of the super area as assured rental till the said unit is leased out. As per the MOU, the complainant was paid assured return amounting to Rs. 1,00,70,967/- for a period of approximately 4 years (i.e. till September 2018). The alleged cause of action if any arose in September 2018. As per the terms of the MOU assured return was payable till the completion of construction. The respondent completed the construction and applied for the grant of OC in November 2018. As per the terms of the MOU the respondent has duly discharged its obligation to pay assured return. The complainant by way of the present complaint have approached the Authority seeking recovery of the alleged amount of assured return/ assured rental after a period of almost 3 years and thus the present complaint is barred by limitation.
- y) That the captioned complaint is frivolous, vague and vexatious in nature. The captioned complaint has been made to injure and damage the interest, goodwill and reputation of the respondent and the said project/complex and therefore, the instant complaint is liable to be dismissed in *limine*. That the complainant is not entitled to any reliefs as claimed herein since the Authority has no jurisdiction to entertain the present complaint.

7. All other averments made in the complaint were denied in toto.

8. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed submissions made by the parties.

E. Jurisdiction of the Authority:

9. The authority observes that it has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial Jurisdiction:

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter Jurisdiction:

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

"Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder."

12. 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 objection raised by the respondent no.1.

F.I Objection regarding non-joinder of necessary party.

13. The respondent-promoter has raised the contention that the present complaint deems to be dismissed due to non-joinder of necessary party as the complainant sold the space allotted to him to M/S ANJ Real Estate Investments (through its signatory Amit Jain) and had also received substantial payment / part consideration from them. By way of the said agreement to sell the complainant has transferred and conveyed all his rights, titles and interest in the said unit to M/S ANJ Real Estate Investments. Vide letter dated 30.07.2020 M/S ANJ Real Estate Investments informed the respondent regarding the execution of agreement to sale with the complainant and that with the execution of said agreement with Mr. Bajaj he has stepped into the shoes of the complainant. Further, an application for impleadment of M/s ANJ Real Estate Investment was made in the present matter on ground that there was an agreement to sell dated 29.07.2020 between the complainant and M/s ANJ Real Estate Investment. However, the complainant argued that the since the respondent was not in a position to provide assured return as per the MoU dated 29.05.2014 duly signed between the parties, so the respondent requested the complainant to buy back of such unit but by the name of M/s ANJ Real Estate Investment for a consideration of Rs.3,25,00,000/- and paid an amount of Rs. 30,00,000/- in this regard. But since the balance payment of Rs. 2,95,00,000/- has not been paid so the said transfer was never completed.

As per clause 3 of the agreement to sale dated 29.07.2020, M/s ANJ Real Estate Investments was required to make the balance payment of Rs. 2,95,00,000/- to the complainant on or before 06.11.2020 but that was never completed. So, the said agreement to sell stood terminated on account of non-performance of obligation of payment of sales consideration by M/s ANJ Real Estate Investments. The Authority is of the view that since the said agreement for sale never attend maturity and no consequent transfer of the unit has taken place, there is no necessity for impleading M/s ANJ Real Estate Investment as a party in the complaint. In view of the same, the objection of the respondent w.r.t. non-joinder of M/s ANJ Real Estate Investment being necessary party stands rejected.

G. Findings on the relief sought by the complainant.

- G.I Direct the respondent to pay interest for delay on the total amount paid by the complainant@ prescribed rate of interest for every month of delay, till the date of actual handing over of the possession of the unit.**
- G.II Direct the respondent to pay pending assured return payments of Rs. 2,00,000/- per month from 01.09.2018 till the date of completion and assured rental returns of Rs. 2,50,000/- per month till the said unit is leased out to the prospective lessee by the respondent.**

I. Assured return

14. The complainant is seeking unpaid assured returns on monthly basis as per MoU dated 29.05.2014 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same by taking a plea that the same is not payable in view of enactment of 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 while reiterating the principle of prospective ruling, has held that the Authority can take different view from the earlier one on the basis of new facts and law and the pronouncements made by the apex court of the land and it was 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)(I)(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.

15. 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.

16. In view of the above, the builder is liable to pay that amount as agreed upon vide MOU and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement defines the builder/buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the MOU. 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-allottees as per clause 5 of the MOU dated September 2018 till the completion of the said project i.e., 06.09.2019 as the respondent has obtained the Occupation Certificate on 06.09.2019. Thereafter, the complainant shall pay assured rental @Rs.50/- per sq.ft. per month till the said unit is lease out to the perspective lessee(s). Further, the Authority observes that clause 39 of the MoU dated 29.05.2014 provides that in no circumstances the maximum liability of the developer on any account whatsoever shall exceed the amount received by the developer from the allottee pursuant to the present document nor the entitlement of the allottee on all the accounts together including refund/interest/damages etc. shall exceed the amount paid by the allottee to the developer.

II Delay possession charges

17. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges with respect to the subject unit as provided under the provisions of 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."

18. It is pertinent to mention here that MOU was executed inter se parties on 29.05.2014 and there is no timeline for completion of the project in the said MOU. In ***Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018***, Hon'ble Apex Court observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period or period for completion of the project stipulated in the MOU, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract. Thus, the due date of completion of the project in view of the aforementioned judgement comes out to be 29.05.2017.

19. Admissibility of delay possession charges at prescribed rate of interest:

The complainant is seeking delay possession charges. 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]

For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the

rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."

20. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules, *ibid* has determined the prescribed rate of interest. 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%.

21. 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;"*

22. 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 offered within a stipulated time i.e., by 29.05.2017.

23. 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?

24. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottee on account of provisions in the acknowledgement letter. The rate at which assured return has been committed by the promoter is Rs.40/- per sq. ft. of the super area per month till the completion of the building which is more than reasonable in the present circumstances. 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.2,00,000/- per month till completion of the building whereas the delayed possession charges are payable approximately Rs. 1,23,338/- per month. By way of assured return, the respondent no.1 has assured the allottee that they would be entitled for this specific amount i.e., Rs.2,00,000/- till completion of construction i.e., till the completion i.e., 06.09.2019 and thereupon @ Rs.2,50,000/- per month. However, in the present matter, clause 39 of the MOU is also relevant which states that in no event and under no circumstances the maximum liability of the developer shall exceed the amount received by the developer from the intending allottee. 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.

25. 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 the date of completion of the project, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.
26. 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 acknowledgement letter executed between the parties. The respondent had agreed to pay to the complainant-allottees Rs.40/- per sq. ft. on monthly basis till completion of construction of building i.e., 06.09.2019 and thereupon @ Rs.50/- per sq. ft. on monthly basis till the said unit is put on lease. The said clause further provides that it is the obligation of the respondent to lease the premises. It is matter of record that the amount of assured return was paid by the respondent till September 2018 but later on, the respondent no.1 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.
27. 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.40/- per sq. ft. per month from the date the payment of assured return has not been made i.e., October, 2018 till the date of completion of building i.e., 06.09.2019** and thereafter, Rs.50/- per sq. ft. per month till the date said unit is put on lease and rentals are achieved by the allottee. Further, the said

assured rentals are payable in terms of the MoU dated 29.05.2014 subject to the maximum liability clause 39.

28. 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 @ 8.85% p.a. till the date of actual realization.

G.III Direct the respondent to provide to the complainant the space buyer agreement and to execute the space buyer agreement and to execute the space buyer agreement and sale deed.

29. 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 29.05.2024 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. Therefore, the respondent is directed to execute the space buyer agreement which contains proper unit details.

30. With respect to the conveyance deed, clause 27 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.

31. 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 of 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."

32. The Authority observes that **OC in respect of the project where the floor** 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 complainant as per norms of the state government.

H. Directions of the authority

33. 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):

1. The respondent is directed to pay the amount of assured return at the agreed rate i.e., @ Rs.40/- per sq. ft. per month from the date the payment of assured return has not been made i.e., October 2018 till the date of completion of building i.e., 06.09.2019 and thereafter, Rs.50/- per sq. ft. per month till the said unit is leased out to the prospective lessees subject to the maximum liability clause 39.

- 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. Direct the respondent to provide the copy of Occupation Certificate dated 06.09.2019 to the respondent within a period of 30 days.
- IV. The respondent shall not charge anything from the complainant which is not part of the MoU executed between the parties on 29.05.2014.
- V. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
34. Complaint stands disposed of.
35. File be consigned to registry.



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

22.07.2025



(Arun Kumar)
Chairman