

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

Date of order:

08.07.2025

NAME OF THE BUILDER		M/s Splendor Buildwell Pvt. Limited	
PROJECT NAME		"Spectrum One"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/4219/2022	Sushila Tiwari V/s M/s Splendor Buildwell Pvt. Limited	Dr. Birender Singh Chauhan, Advocate and Ms. Shriya Takkar Advocate
2.	CR/4227/2022	Danish Ahmad & Raghav Tiwari V/s M/s Splendor Buildwell Pvt. Limited	Dr. Birender Singh Chauhan, Advocate and Ms. Shriya Takkar Advocate

CORAM:

Shri Arun Kumar

Shri Ashok Sangwan

Chairman

Member

ORDER

1. This order shall dispose of all the complaints titled as above filed before the authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely,

"Spectrum One" being developed by the same respondent/promoter i.e., M/s Splendor Buildwell Pvt. Limited. The terms and conditions of the builder buyer agreement and allotment letter against the allotment of unit in the said project of the respondent/builder and fulcrum of the issues involved in these cases pertains to failure on the part of the promoter to complete the construction of the project, seeking unpaid assured return along with interest at the prescribed rate, delay possession charges.

3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"Spectrum One", Sector 58, Gurugram, Haryana.					
<p>Assured return clause in complaint bearing no. 4219-2022: ANNEXURE 2 MEMORANDUM OF UNDERSTANDING DATED 29.11.2018.</p> <p>That the Developer has assured the Allottee that the building shall be completed within 12 months from the date of execution or this MOU. However, in case the building is not completed in stipulated time. then the developer will pay Rs 65 per sq. Ft. per month on 500 sq. ft. as an assured return to the Allottee from 01 Dec. 2019 till the Said Unit Is leased out to the prospective lessee(s). The above assured return cheques shall be payable on or before 15th day or each succeeding calendar month subject to deduction of TDS as per rates prescribed under the Income Tax Act, 1961 in the relevant period.</p> <p>[Page 41 of complaint]</p>						
<p>Assured return clause in complaint bearing no. 4227-2022: ANNEXURE 2 MEMORANDUM OF UNDERSTANDING DATED 29.11.2018.</p> <p>That the Developer has assured the Allottee that the building shall be completed within 12 months from the date of execution or this MOU. However, in case the building is not completed in stipulated time. then the developer will pay Rs 65 per sq. Ft. per month on 500 sq. ft. as an assured return to the Allottee from 01 Dec. 2019 till the Said Unit Is leased out to the prospective lessee(s). The above assured return cheques shall be payable on or before 15th day or each succeeding calendar month subject to deduction of TDS as per rates prescribed under the Income Tax Act, 1961 in the relevant period.</p> <p>[Page 44 of complaint]</p>						
1	2	3	4	5	6	7

S. no.	Complaint no. / Title/ Date of Filing / Reply	Unit no. and area	Date of builder buyer agreement	Due date of possession	Total sale consideration and amount paid	Relief sought
1.	CR/4219/2022 Sushila Tiwari V/s M/s Splendor Buildwell Pvt. Limited DOF- 23.06.2022 Reply- 09.02.2023	402A, 4 th floor, tower D of 500 sq. ft. [Page 19 of complaint]	29.11.2018 (Page 16 of complaint)	29.11.2022 [Calculated from the date of execution of buyer's agreement being later] [Grace period is allowed being unqualified]	TC- Rs. 22,50,000 AP- Rs. 25,20,000	• Direct the respondent to immediate possession of allotted unit 402A as was promised along with rate of interest @Rs. 32500/- p.m. from 01.12.2019 as per MOU dated 29.11.2018, till the date of possession as was agreed and promised.
2.	CR/4227/2022 Danish Ahmad & Raghav Tiwari V/s M/s Vatika Limited DOF- 08.12.2022 Reply- 03.04.2023	402B, 4 th floor, tower D of 500 sq. ft. [Page 21 of complaint]	29.11.2018 (Page 18 of complaint)	29.11.2022 [Calculated from the date of execution of buyer's agreement being later] [Grace period is allowed being unqualified]	TC- Rs. 22,50,000 AP- Rs. 25,20,000	• Direct the respondent to immediate possession of allotted unit 402A as was promised along with rate of interest @Rs. 32500/- p.m. from 01.12.2019 as per MOU dated 29.11.2018, till the date of possession as was agreed and promised.
<p>Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:</p> <p>Abbreviation Full form</p> <p>DOC Date of filing complaint TC Total consideration AP Amount paid by the allottee(s)</p>						

4. It has been decided to treat the aforesaid complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
5. The facts of the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/4219/2022 titled as Sushila Tiwari Vs M/s Splendor Buildwell Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua the reliefs sought by the complainant-allottee.

A. Project and unit related details

6. 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:

CR/4219/2022 titled as Sushila Tiwari V/s M/s Splendor Buildwell Pvt. Limited.

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.	402A, 4 th floor, Tower-D (Page 19 of complaint)
8.	Unit area admeasuring	500 sq. ft. (Page no. 19 of complaint)
9.	Date of execution buyers' agreement	29.11.2018(Page no. 16 of complaint)

10.	Possession clause	9.2 That the Company shall, under normal circumstances, complete the construction of the Said Tower in which the Said Unit is located within a period of 42 (forty two) months with a grace period of 6 (six) months and subject to force majeure circumstances as defined herein from the date of execution of this Agreement or start of construction of the Tower wherein the Said Unit is located whichever is later in accordance with the said approved plans and specifications seen and accepted by the Allottee (with additional floors with space if permissible) with such additions, deletions, alterations, modifications in the layout plans, change in number, dimensions, height, size, area or change of entire scheme, which the Company may consider or may be required by any competent authority to be made in them or any of them... [pg. 23 of complaint]
11.	Date of start of construction	February 2014 [As admitted by the respondent on page 11 of reply]
12.	Due date of possession	29.11.2022(Calculated from the date of execution of buyer's agreement being later) Grace period is allowed being unqualified
13.	MoU	29.11.2018(pg. 37 of complaint)
14.	Assured return as per MoU	Clause 5: That the Developer has assured the Allottee that the building shall be completed within 12 months from the date of execution of this MOU. However, in case the building is not completed in stipulated time, then the Developer will pay Rs. 65 per sq. Ft. per month on 500 sq. ft. as an assured return to the Allottee from 01 Dec, 2019 till the Said Unit is leased out to the prospective Lessee(s). The above assured return cheques shall be payable on or

		before 15th day of each succeeding calendar month subject to deduction of TDS as per rates prescribed under the Income Tax Act, 1961 in the relevant period. [pg. 41 of complaint]
15.	Total basic sale consideration	Rs.22,50,000/- (Page 19 of complaint)
16.	Amount paid by the complainant	Rs.25,20,000/- (Page 41 of complaint)
17.	Occupation certificate /Completion certificate	06.09.2019 (Page 125 of reply)
18.	Offer of possession	07.01.2021 [Page 127 of reply]

B. Facts of the complaint

7. The complainant has made the following submissions in the complaint: -
- That the complainant is a senior citizen. She was approached by the representatives of the builder for buying the ibid commercial space of the premium project situated at Gurugram. During offer of the sale the representatives also assured about the ROI as lease rent from the fixed period onward.
 - That having bonafide trust on the representation and assurances of the sale representatives of the builder, the complainant agreed to buy the said commercial unit no. 402-A.
 - The assured ROI was to be paid by the builder/associate company w.e.f. 01.12.2019 irrespective of any date of possession etc.
 - That the representatives of the builders had shown and propagated about the competence of the builder and its many projects. The complainant trusting on the bonafide information shown in the documents and whatever was explained by the representatives of the builder.
 - That the complainant also seen the site and also verified about the land details of project etc., at her own level. Based on facts and information

supplied by the representatives of the builders very diligently and trusted on the offer of the builder.

- f. That the complainant paid the full amount of the commercial space and BBA/MOU was signed and the unit no. 402A was allotted as per the choice of the buyer.
- g. Now as the builder having failed to deliver the possession of the said unit i.e., 402A as per the terms and conditions of the agreement and also did not pay any amount towards the assured ROI as lease rent as was promised and was the contingent condition of selling the said unit. Also, it was very shocking to learn and unbelievable by the complainant that the builder recently is sending letter of possession of different unit i.e., 602 in place of 402A, which is a clear cheating and breach of trust and breach of BBA between the complainant and the builders.
- h. The builder is giving different offers of increased area and additional benefits etc., to change the unit from 402A to 602 which was not accepted and was flatly refused by the complainant to accept another unit in place of allotted unit.
- i. That the builder has never giving offer of possession of the allotted unit i.e., 402A and nor paying the assured ROI @32500/-pm from 01.12.2019 as was agreed as per MOU in addition to the BBA.
- j. That the complainant has paid the full and entire amount, and nothing is left to be paid by the complainant the same has been acknowledged by the builder in BBA under clause 5 and 5.1 of the BBA dated 29.11.2018.
- k. That the complainant tried all way out by her personal visit and meeting the ARs of the builder many times. However, it yielded no results except empty promises that all issues will be resolved soon.

- l. That the complainant got sent a legal notice dated 21.02.2022 by the lawyers but got no reply from the builder till date and of no avail and hence, the complainant has no other option left but to approach this authority in the interest of the Justice.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s)
 - a. Direct the respondent to immediate possession of allotted unit 402A as was promised along with rate of interest @Rs. 32500/- p.m. from 01.12.2019 as per MOU dated 29.11.2018, till the date of possession as was agreed and promised.
 - b. Direct the respondent to pay delay possession charges.
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 contested the complaint on the following grounds:
 - a. That without prejudice to the aforementioned contentions it is stated that the complainant has approached this 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 veri and Supressio falsi*. The complainant has suppressed material facts and documents including demand letter cum offer of possession letter dated 07.01.2021 sent by the respondent to the complainant and/or misstated 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. The instants complaint is not maintainable and deems dismissal for the reason that it is not supported by proper affidavit as both the complainant have signed on a single affidavit in support of the complaint.
- c. That the complainant, in the present case are seeking relief claiming assured returns and assured rentals along with other reliefs as per the MOU and SBA executed between the parties. The complainant has failed to establish any violation of the provisions of the 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, 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. It is relevant to mention here that nowhere in the said provision the Authority has been dressed with jurisdiction to grant "assured returns".
- e. Admittedly, the complainant is not entitled to any assured return from the respondent as the building in question was completed and the Occupation Certificate of the subject project was received on 06.09.2019. In terms of clause 5 of the MOU, it is only when the building is not completed within 12 months from the date of the execution of MOU i.e., by 28.11.2018, the respondent was to pay assured return to the complainant from 01.12.2019. Without prejudice to the above admitted position, 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. That 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 5,6,7,9,10,11 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. It is further stated that various terms of the said MOU have since been declared against law and fresh enactments, such clauses of the said MOU have become redundant. It is stated that under such and other extenuating circumstances the respondent was constrained to cancel the MOU dated 29.11.2018 executed between the parties vide notice dated 07.01.2021. Admittedly, the complainant in the present complaint has not assailed the said cancellation of MOU as such is not entitled to make any claim under the said MOU.

- f. That without prejudice to the submissions made in the foregoing paras, it is submitted 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 Authority, 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.

- g. The present complaint is liable to be rejected as 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.
- h. 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.
- i. 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 Hon'ble Authority in

the order dated 07.08.2018 passed in Complaint No. 141 of 2018 titled as ***Bhrimjeet vs. M/s. Landmark Apartments Pvt. Ltd.***

- j. That in the above-mentioned matter of ***Bhrimjeet 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. The Authority went on to further issue directions to the allottee in the case to file a case for assured returns before the appropriate forum. The above-mentioned order dated 07.08.2019 has further been upheld by the Authority in the case of ***Kailash Devi vs. M/s. Landmark Apartments Pvt. Ltd. (Complaint No. 355/2018)*** and ***Geeta Rani vs. M/s. Landmark Apartments Pvt. Ltd. (Complaint No. 870/2018)***.
- k. 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. Thereafter, a space buyer agreement dated 29.11.2018 was executed between the parties vide which unit no. 402 A admeasuring 46.45 sq. mtrs i.e. 500 sq. ft. of super area and 27.87 i.e. 300 sq. ft. of covered area on the fourth floor of tower D of the IT park complex 'Spectrum one' situated at Sector 58, Gurugram was allotted to the complainant for basic sale price of Rs.22,50,000/- along with EDC, IDC, EEC, other charges, service tax, VAT any other statutory duty/taxes, charges, cesses etc. payable by the complainant as mentioned in the said space buyer agreement. The allotment of the said unit had been confirmed upon execution of the said space buyer agreement and it is the said space buyer agreement which contains the allotment terms and govern the

builder and allottee relationship between the parties which is within the jurisdiction of the Authority.

- l. That the complainant had specifically opted for investment return plan and in pursuant thereto a memorandum of understanding was executed with the complainant herein regarding assured return and leasing of the said unit. The consideration paid by the complainant under the said space buyer agreement has merely been reiterated in the said MOU and thus, no separate consideration has been paid by the complainant under the said MOU. Various terms of the said MOU have since been declared against law and fresh enactments, such clauses of the said MOU have become redundant and the said MOU stands terminated vide notice dated 07.01.2021. It is stated that accordingly the basic sale price of Rs.22,50,000/- as agreed under the said space buyer agreement was reiterated in the said MOU and it was further mentioned in clause 3 of the MOU that the consideration for the allotment of the said unit has been determined at to totals basics sale consideration of Rs.22,50,000/- and other dues, charges and taxes as per the said space buyer agreement.
- m. In terms of the said MOU, it was mutually agreed between the parties under clause 5 of the MOU that in case the building is not completed within 12 months from the date of execution of the MOU i.e. by 28th November 2019, the respondent would pay Rs. 65/- per sq.ft. per month as an assured return to the complainants from 01.12.2019 till the said unit is leased out. The 12 months from the date of execution of MOU dated 29.11.2018 comes out to be 28.11.2019. However, admittedly the said building was completed within the stipulated time period and the respondent applied for the Occupancy Certificate on 26.11.2018 and was granted the same on 06.09.2019 i.e., before the timeline stipulated under clause 5 of the MOU.

Further, it was also intimated to the complainant vide various communications including notice dated 07.01.2021 that since the respondent developer has duly completed the construction of the said project within the stipulated time period, as such in terms of clause 5 of the MOU, the respondent is not liable to pay any amount as assured return in terms of the said MOU. Since the building was completed much before 12 months from the date of execution of the MOU and the respondent had also obtained Occupation Certificate of the said building before the stipulated period of 12 months, the respondent was not liable to pay any assured return @ Rs. 65/- per sq. ft. to the complainant.

- n. That the complainants as an afterthought to unjustly enrich themselves are at a belated stage seeking monthly assured return @ Rs. 65/- per sq.ft. as per clause 5 of the MOU till handing over of the physical possession, which was never the understanding between the parties under clause 5 of the MOU. The assured return under clause 5 of the MOU was to be paid only if the construction was not completed within the time stipulated time period and since the construction was completed and the OC was received within the stipulated time period i.e. before 29.11.2019, the respondent developer is not entitled to pay any assured return to the complainant as per the terms and conditions of the MOU.
- o. That in terms of the said space buyer agreement, the complainant in addition to the basic sales consideration are liable to make payments towards charges as mentioned under clause 3.1, 3.2, 3.3, 5.1, 5.9 and 6.1 and 11.5 of the space buyer's agreement dated 29.11.2018. The complainant made payment of basic sale price amounting to Rs. 25,20,000/-. However, in addition to the above the complainant is also liable to make other payments in accordance with clause 3 of the MOU and clause 3.1, 3.2, 3.3,

5.1, 5.9 and 6.1 of the space buyer's agreement. In view of the above, the complainant is liable to make a payment of Rs. 14,87,425/- and a sum of Rs. 1,00,000/- towards IFMS in terms of clause 11.5 the space buyer's agreement dated 29.11.2018.

- p. That the space buyer's agreement executed between the parties covers all the rights and liabilities of the parties. As clause 9.2 of the space buyer's agreement the respondent was supposed to complete the construction of the said tower, under normal circumstances, in which the said unit is located within 42 months from the date of execution of the agreement of date of start of construction of the tower, whichever is later with 6 months grace period. Upon completion of the said tower, the respondent was to undertake post construction activities including applying for occupancy certificate. Upon the grant of the Occupation Certificate, the respondent was to write to the allottee to complete the formalities and take over the possession of the said unit and from the receipt of that possession notice/final call/demand letter, the complainant was required to take possession within a period of 30 days from the due date mentioned in the letter.
- q. That the construction of the tower in which the unit of the complainant is situated started in the month of February 2014 and the agreement was executed between the parties on 29.11.2018. Therefore, the date of execution of agreement being the later date is of prime importance in calculating the due date of handing over possession. The due date of completion of the said unit comes to 29.11.2022. In compliance of its contractual obligations, the respondent had duly completed the construction of the tower within which the said unit is located before time i.e., in September 2018, which clearly reflects that the respondent duly

completed the construction of the said Unit in a time bound manner. Thereafter the respondent duly applied for the Occupation Certificate vide application dated 26.11.2018. After rigorous follow up by the representatives of the respondent, the Department of Town and Country Planning, Haryana issued the Occupation Certificate on 06.09.2019 of the said project after due verification and inspection.

- r. That as per clause 9 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 they 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.
- s. That after receipt of the Occupancy Certificate of the said project, since the complainant had waived off its right of physical possession under clause 9 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.
- t. That since the due date of completion of the said unit was 29.11.2022, the respondent in continuation of its earlier communication vide which they had informed the complainant about completion of construction and development and receipt of occupancy certificate for the said project and

requested the complainant to take possession and get the conveyance deed of the said unit registered, vide letter dated 07.01.2021, besides offering possession to the complainant, the respondent herein also expressed its readiness and willingness to execute the conveyance deed transferring the title, right and interest in respect to the said unit in favour of the complainant upon clearing of the outstanding dues by the complainant. Further, it was also intimated to the complainant that since the respondent has duly completed the construction of the said project within the stipulated time period, as such in terms of clause 5 of the MOU, the respondent is not liable to pay any amount as assured return in terms of the said MOU. The complainant was also informed regarding recent statutory enactment and that the respondent was under no obligation to pay the assured returns to the complainant.

- u. That vide offer of possession dated 07.01.2021, the respondent also informed the complainant as under:

*"It is stated that under the aforementioned Clause 9 of the said MOU, you had inter alia waived your right to seek physical possession and seek division of the said unit from the larger area adjoining units. However, now your property consultant through whom the above transaction was done, had asked the Company on your behalf to handover the physical possession of the Said Unit, which was booked as undivided share, in lockable mode by segregating it from the larger area. Your said property consultant have also desired on behalf of all their investors including you that all area booked in this project, through them, be offered on physical possession basis (which was booked as undivided share) and conveyance deed be redrafted and executed accordingly. **They have further expressed their desire, on behalf of all the investors including you, that to the extent possible all bookings of their investors be done together in Tower D (Tower North) which were***

earlier segregated and allotted in different towers and floors. Your said property consultant has also asked the Company to execute Conveyance Deed transferring the title, right and interest of the said lockable Unit in your favour. Accordingly, the Company had accepted this request and is ready to give the physical possession of Unit No.620 admeasuring 500 sq. ft. of super area on the Sixth Floor in Tower D of the Said Project ('Said Lockable Unit') to you Client in lieu of and on the same terms and conditions of the earlier allotment of the said unit."

Since as per clause 9 of the MOU, the complainant had waived off their right to claim physical possession of the unit, but only on request of the complainant along with other allottees through their property consultant, the respondent agreed to handover physical possession of the units to the allottee. Since the complainant through its property consultant had requested for allocation of all the units together in tower D, therefore the respondent allotted and offered possession of unit no. 620 of same area as that of the previous unit, to the complainant. In the humble submission of the respondent that the change in the unit number of the complainant is duly covered under the space buyer's agreement as well as in clause 8 of the said MOU.

- v. That it is only in terms of discussions held with the complainant's representatives to handover possession of the unit to the complainant in lockable mode by segregating it from the larger area that the respondent had changed the number of the said unit to said lockable unit.
- w. That in terms of the said space buyer agreement, the complainant in addition to the basic sales consideration are liable to make payments towards dues and charges as mentioned under clause 3.1, 3.2, 3.3, 5.1, 5.9

- and 6.1 of the space buyer's agreement dated 29.11.2018. The complainant made payment of basic sale price amounting to Rs. 25,20,000/-. However, in addition to the above the complainant is also liable to make other payments in accordance with clause 3.1, 3.2, 3.3, 5.1, 5.9 and 6.1 of the space buyer's agreement. The respondent has not raised any demand for any charge beyond the scope of the space buyer's agreement. Vide offer of possession letter dated 07.01.2021, the complainant was requested to pay the outstanding amounts/possessional dues in terms of the said agreement, complete all the requisite formalities, execute and get registered the conveyance deed and take legal physical possession of the unit in question.
- x. That even after the issuance of the letter dated 07.01.2021 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 respondent issued reminder letter dated 08.05.2021 to the complainant requesting them to clear their outstanding dues and take possession of the said unit. Since the complainant did not come forward to clear their dues and take possession of the unit, the complainant is liable to pay delayed interest on the due payments and maintenance charges and holding charges to the respondent for which the demand notes are being sent from time to time to the complainant. The complainant has not actually taken possession of the said unit, in the said demand letter, as a gesture of goodwill, only 50% of the applicable maintenance charge have been claimed. It is submitted that as per clause 5.12 of the said agreement, the respondent having first lien/charge on the said units booked by the complainant for the recovery of all its dues and other sums payable by the complainant to the respondent.
- y. That without prejudice to what is stated in foregoing paras, that the rights of the respondent to lease out the said unit as per the said MOU only triggers

when the complainant get the said unit free from lien of the respondents and obtains a no-objection certificate from the respondent with regard to the lien created under the said agreement. The respondent would be otherwise under no obligation to lease out the said unit, as every prospective lessee requires the leased premises to be free from all encumbrances. Even otherwise despite encumbrance in respect of the said unit, the respondent has arranged a letter of intent from a prospective lessee for leasing of the entire floors on 5th and 6th floor including the said unit of the complainant on the 6th floor and for that purpose, the respondent issued a letter dated 06.01.2022 to the complainant, however the complainant has not accepted the said leasing offer.

- z. That despite severe slump in real estate market, distressed market condition, very low demand and hostile market scenario due to COVID-19 the respondent found a prospective lessee to lease out the said unit. The Authority vide its order dated 26.05.2020 also invoked the force majeure clause. The hardships being faced due to the prevailing Covid-19 Pandemic is not a hidden fact. The facts enumerated hereinabove clearly establish that the present complaint has been filed by the complainant to take advantage of their own wrongs.
- aa. That further as per clause 9.3 and 9.4 of the space buyer's agreement, the complainant was bound to clear their dues and take possession of the said unit within a period of 30 days.
- bb. That since the due date of completion of the said unit was 29.11.2022, the respondent in continuation of its earlier communication vide which they had informed the complainant about completion of construction and development and receipt of occupancy certificate for the said project and requested the complainant to take possession and get the conveyance deed

of the said unit registered, vide letter dated 07.01.2021, besides offering possession to the complainant, the respondent also expressed its readiness and willingness to execute the conveyance deed transferring the title, right and interest in respect to the said unit in favour of the complainant upon clearing of the outstanding dues by the complainant. Further, it was also intimated to the complainant that since the respondent has duly completed the construction of the said project within the stipulated time period i.e., by 29.11.2019, as such in terms of clause 5 of the MOU, the respondent is not liable to pay any amount as assured return in terms of the said MOU. The complainant was also informed regarding recent statutory enactment and that the respondent was under no obligation to pay the assured returns to the complainant.

- cc. Thus, from the averments made hereinabove it is absolutely clear that there is no delay on the part of the respondents in offering possession of the unit to the complainant and thus, the complainant is not entitled to any relief whatsoever. Thus, the complainant is liable to proceed with the transaction and pay their outstanding dues along with delayed interest, maintenance charges, holding charges etc.
- dd. That the complainant has failed to get the conveyance deed registered and take possession of the said unit, hence, the complainant is deemed to have taken possession of the said unit for the purposes of maintenance etc. in terms of the said agreement. 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 their reciprocal promises to be performed as laid down in the said agreement. 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.

- ee. That in the present case, the complainant has failed to bring to the notice of the Authority that it was in fact the complainant who are a defaulter and were is in arrears for payment of outstanding dues and charges as per said space buyer agreement for which demand letters and reminders were sent to them.
 - ff. That in terms of the clause 3.1, 3.2, 3.3, 5.1, 5.9 and 6.1 of the said agreement, a sum of Rs. 14,87,425/- plus interest at the prescribed rate inclusive of GST is due and payable by the complainant to the respondent as at 07.01.2021.
 - gg. That the complainants, who have filed a malafide complaint with false facts with sole intention to unjustly enrich themselves, cannot be entitled to seek any relief from the Authority. The respondent is entitled to compensation from the complainant for the losses and damages in consequence of the non-performance of the said space buyer's agreement 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.
7. 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 based on these undisputed documents and submission made by the complainant.
8. The complaint was disposed by order dated 22.10.2024, but the final judgment was not uploaded. Meanwhile, the respondent filed an application for rectification of the proceedings dated 22.10.2024. After hearing both the parties, the Authority is of the view that the application filed by the respondent is seeking rectification of substantial part of the order pronounced by the Authority and

duly recorded in the proceedings dated 22.10.2024. the same cannot be rectified in terms of the proviso to Section 39 of the Act, 2016 and therefore, the application for rectification cannot be allowed. In view of the above the said application was dismissed on 08.07.2025.

E. Jurisdiction of the Authority

9. The respondent has raised preliminary objection regarding jurisdiction of Authority to entertain the present complaint. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E. I Territorial jurisdiction

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 relief sought by the complainant

13. The common issues with regard to assured return, delay possession charges and execution of conveyance deeds is involved in the aforesaid complaints.

F.I. Assured return

14. The complainant is seeking unpaid assured returns on monthly basis as per addendum to the agreement at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the agreement. 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 building in question was completed and the OC of the subject project was received on 06.09.2019. In terms of clause 5 of the MoU, it is only when the building is not completed within 12 months from the date of execution of MoU i.e., by 28.11.2018, the respondent was to pay assured return to the complainant from 01.12.2019. Moreover, the same is not payable in view of enactment of the Banning of Unregulated Deposit Schemes Act, 2019 (hereinafter referred to as the Act of 2019), citing earlier

decision of the authority (*Brhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd., complaint no 141 of 2018*) whereby relief of assured return was declined by the authority.

15. 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.
16. 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 allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.

17. In view of the above, the builder is liable to pay that amount as agreed upon 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 i.e., from 01 December 2019 till the said unit is leased out to the prospective lessee. Thereafter, lease rental will be paid to the complainant(s) in terms of MoU dated 29.11.2018. Further, the Authority observes that clause 26 of the MoU dated 29.11.2018 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.

F. II Delay possession charge.

18. In the present complaint, the complainant intends to continue with the project and are seeking possession of the subject unit and delay possession charges 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."

19. A builder buyer agreement dated 29.11.2018 was executed between the parties.

The due date is calculated as per clause 9.2 of BBA i.e., 42 months with a grace period of 6 months and subject to force majeure circumstances as defined herein from the date of execution of this agreement or start of construction of the tower wherein the said unit is located whichever is later. The date of execution of buyer's agreement being later, the due date of handing over of possession is reckoned from the date of buyer's agreement and the grace period of 6 months is also allowed being unqualified/unconditional. Therefore, the possession was to be handed over by 29.11.2022. The relevant clause is reproduced below:

"That the Company shall, under normal circumstances, complete the construction of the Said Tower in which the Said Unit is located within a period of 42 (forty two) months with a grace period of 6 (six) months and subject to force majeure circumstances as defined herein from the date of execution of this Agreement or start of construction of the Tower wherein the Said Unit is located whichever is later in accordance with the said approved plans and specifications seen and accepted by the Allottee (with additional floors with space if permissible) with such additions, deletions, alterations, modifications in the layout plans, change in number, dimensions, height, size, area or change of entire scheme, which the Company may consider or may be required by any competent authority to be made in them or any of them."

20. **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. 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."

21. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules 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., 08.07.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
22. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

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 interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

23. 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 agreement executed between the parties on 29.11.2018, the possession of the subject unit was to be delivered within stipulated time i.e., 29.11.2022.

24. 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?
25. 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.65/- per sq. ft. of the super area per month from 01 December 2019 till the said unit is leased out to the prospective lessee 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.32,500/- per month till the unit is put on lease whereas the delayed possession charges are payable approximately Rs. 23,310/- 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.32,500/- till the date of leasing out to the prospective lessee(s). thereafter, lease rental will be paid to the complainant(s) in terms of MoU dated 29.11.2018. However, in the present matter, clause 26 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 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.

26. 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.
27. 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.65/- per sq. ft. on monthly basis till the date of leasing out to the prospective lessess. The said clause further provides that it is the obligation of the respondent to lease the premises. It is matter of record that the respondent no.1 refused to pay the assured return 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.

28. 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.65/- per sq. ft. per month from December 2019 till the date of leasing out to the prospective lessor(s). thereafter, lease rental will be paid to the complainant(s) in terms of MoU dated 29.11.2018 subject to clause 26 of the MoU.
29. 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

F.III Possession & Conveyance deed

30. As far as relief of possession of initially allotted unit is concerned, this Authority is of the view that the respondent has already obtained the OC for the unit in question on 06.09.2019 but instead of offering possession of the unit allotted to the complainant i.e., 402A, offered the possession of another unit bearing no. 602, which is not acceptable to complainant(s) and hence said offer of possession is not a valid offer. In view of the above, even though the respondent obtained the OC for the project within 12 months, the same was of no relevance to the complainant as the complainant's unit was not offered within the stipulated time. In view of the above, the respondent cannot be said to be discharged of its liability in this regard. Therefore, the complainant is entitled to retain the original unit and handover the unit in terms of MoU dated 29.11.2018.

31. With respect to the conveyance deed, clause 8 of the BBA provides that the respondent shall sell the said unit to the allottee by executing and registering the conveyance deed and also do such other acts/deeds as may be necessary for confirming upon the allottee a marketable title to the said unit free from all encumbrances.
32. 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."

33. 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 allotted unit within 90 days upon receipt of the payment of requisite stamp duty by the complainant as per norms of the state government.

G. Directions of the Authority

34. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act:
- i. The respondent is directed to pay the amount of assured return at the agreed rate i.e., @ Rs. 65/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., 01.12.2019 till the date of leasing out to the prospective leases(s). thereafter, lease rental will be paid to the complainant(s) in terms of Memorandum of Understanding dated 29.11.2018 subject to maximum liability clause 26.
 - 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 complainants and failing which that amount would be payable with interest @ 9.10% p.a. till the date of actual realization.
 - iii. The respondent shall execute the conveyance deed of the allotted unit within the 3 months from the final offer of possession after the receipt of the OC from the concerned authority and upon payment of requisite stamp duty as per norms of the state government.
 - iv. The respondent shall not charge anything from the complainants which is not the part of the builder buyer agreement read with MoU dated 29.11.2018.

35. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
36. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
37. File be consigned to the registry.



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram



(Arun Kumar)
Chairman

08.07.2025