

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

Complaint no.: 314 of 2022
Date of filing: 31.01.2022
Date of first hearing: 05.04.2022
Date of decision: 09.09.2025

Nand Lal Gauba
Pardeep Gauba
Both are R/o: - 885-P, Sector 5, Gurugram,
Haryana

Complainants

Versus

Splendor buildwell Pvt. Ltd.
Regd. Office at: - 501-511, 5th floor, plot no.
3, Jasola Distt. Centre, New Delhi-110025

Respondent

CORAM:
Shri Arun Kumar
Shri Ashok Sangwan

Chairman
Member

APPEARANCE:
Mr. Yogesh Chabbra
Ms. Shriya Takkar (Advocate)

Complainants
Respondent

ORDER

1. This complaint has been filed by the complainant-allottees 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"Spectrum One", Sector 58, Gurugram, Haryana
2.	Project area	6.775 acres
3.	Nature of the project	IT/Cyber Park
4.	DTCP license no.	82 of 2010 dated 12.10.2010
	License valid up to	29.05.2020
	Name of licensee	Ishayu Builders and Developers Pvt. Ltd.
5.	RERA Registered/ not registered	Registered vide no. 376 of 2017 dated 07.12.2017 Valid up to 31.12.2018
6.	Unit no.	Not Mentioned
7.	Unit area admeasuring	1000 sq. ft. (Page 15 of complaint)
8.	Date of execution buyers' agreement	Not executed
9.	MoU	01.06.2012 (Page 13 of complaint)
10.	Assured return as per MoU	Clause 5- The Developer will pay Rs. 60/- per sq. ft. per month on 1000 sq. ft. as an assured return to the intending allottee from 01.06.2012 till the completion of the Said Project. Thereafter, the Developer shall pay Rs.50/- per sq. ft. per month on 1000 sq. ft. as assured return till the Said

		Unit is leased out to the prospective lessee(s). [Page 16 of complaint]
11.	Due date of possession	N/A
12.	Total basic sale consideration	Rs.32,00,000/- (Page no. 15 of complaint)
13.	Amount paid by the complainants	Rs.32,00,000/- (Page 15 of complaint)
14.	Occupation certificate /Completion certificate	06.09.2019 (Page 204 of reply)
15.	Offer of possession	Not placed on record
16.	Assured return paid by the respondent	Rs.42,60,000/- till April 2018 [Page 6 and 62-77 of reply] To be ascertained during hearing Note: However, as per calculations placed on record by the complainant, Rs.37,26,000/- has been paid as assured return w.e.f. June 2012 till April 2018. [Page 32 of complaint]
17.	Legal notice sent by the complainants to the respondent seeking payment of assured return	10.08.2021 [Page 33 of complaint]

B. Facts of the complaint.

3. The complainants have made the following submissions by way of filing the present complaint: -

- That the complainants trusting upon respondent through advertisement in newspaper/electronic media, the complainants have booked a "IT Park Space" measuring area of 1000 sq.ft. in the Splendor Buildwell Private Limited project namely at "Splendor Spectrum One IT Park Complex", situated at Sector 58 in Gurugram, Haryana. As recorded in the said

agreement the full and final payment including service tax had been paid by the complainants and no further amounts are payable by the complainants.

- b) That the complainant's had booked aforesaid commercial space under their jointly name i.e., Sh. Nand Lal Gauba & Sh. Pardeep Gauba under assured return linked payment plan for total basic consideration of Rs. 32,00,000/-.
- c) That as per clause no. 5 of the page no 4 of the agreement between the parties the respondent will pay Rs. 60/- per sq.ft. per month on 1000 sq.ft. area which comes to Rs.60,000/- as an assured return to the intending complainants from 01.06.2012 to till the said unit is leased out to the prospective lessee(s).
- d) The respondent has paid assured return amount to complainants for the period as per the agreement for June 2012 to April 2018. The complainants attempted to contact the respondent officers on several occasions however the complainants' officers deliberately ignored all calls. Aggrieved by the respondent failure to honour its commitments. The respondent to make payment of assured returns as per contract and to execute title documents of the unit in favour of the complainants and to handover peaceful possession of the same. Since the respondent was deliberately avoiding the telephonic calls made and letters issued by the complainants requesting the respondent to honour its obligations as per the agreement, the complainants were constrained to issue a legal notice through its counsel on ones again calling upon the make payment of the assured return in terms of the agreement and to also execute the title documents for the unit and peaceful possession of the same

- e) That aggrieved by the failure of the respondent to honour the terms of the agreement dated 01.06.2012 the complainants has no other option but to approach the Authority.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

- I. Direct the respondent to handover of peaceful possession of "IT Park Office Space" measuring area of 1000 sq.ft. in the project.
 - II. Direct the respondent to execute the documents with proper unit allotment in favour of the complainants pertaining to "IT Park Office Space" measuring area of 1000 sq.ft. in the project.
 - III. Direct the respondent to pay pending assured return payments from May 2018 to till the date of assured return/investment return of Rs. 60/- per sq.ft. per month to the complainants in terms of the agreement dated 01.06.2012.
 - IV. Direct the respondent to produce all the relevant licenses and approvals, including Completion Certificate and Occupation Certificate.
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 complainants have 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 complainants have 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 complainants 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 01.06.2012 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 08.08.2020 the complainant 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 complainants has transferred and conveyed all his rights, titles and interest in the said unit to M/S ANJ Real Estate Investments. Vide letter dated 04.09.2020 M/S ANJ Real Estate Investments informed the respondent regarding the execution of agreement to sale with the complainants and that with the execution of said agreement with the complainants they have stepped into the shoes of the complainants. 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 complainants are 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 complainants were paid assured return amounting to Rs. 42,60,000/- for continuous period of approximately 6 years. Vide letter dated 10.11.2016 the respondent had informed the complainants that due to unprecedented national situation created due to demonetization by the government, the respondent shall not be able to honour the cheques issued for assured return for that point of time. The complainants never object to the same. The complainants have suppressed the aforesaid letter dated 10.11.2016 from the Authority.
- f) That 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.

- g) 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.***

- h) That on a closed 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 clauses pertaining to assured return and similar clauses of 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 the said void terms of the MoU. The specific performance of the assured return or assured rental cannot be prayed especially in view of clause 34 of the said MoU, which is a prospective clause.
- i) In light of the above, the respondent was constrained to issue a letter dated 03.08.2019 to the complainants intimating that in light of the change in legislation/new enactment, the respondent is disable to perform its obligations under the said MoU and in turn, offered a refund of the entire amount of Rs. 32,00,000/- paid by the claimants in accordance with clause 40 of the said MoU. The obligations of the respondent under the said MoU were discharged and all outstanding amounts till date shall be settled in terms of the said MoU. However, the complainants refused to accept the

said offer and did not even respond to the said letter as they were only interest in assured return and assured rentals and eke out monies from the respondent irrespective of any new enactment and irrespective of what they have agreed under the said MoU dated 01.06.2012. the complainants have suppressed the said letter dated 03.08.2019 from the Authority.

- j) 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 complainants in filing this complaint before the Authority and seeking the reliefs which the complainants are not entitled to raise before the Authority.
- k) That the present claim qua enforcement of the terms of the said MOU qua assured returns and assured rentals is liable to be dismissed for the reason that the Authority cannot adjudicate over the subject matter of the assured returns/rentals in as much as the same is an aspect/facet out of the many related/incidental aspects covered under the BUDS Act. As a necessary corollary, an order/decision on the subject matter falling within the realms of the BUDS Act, would not only amount to exercise of arbitrary and excessive jurisdiction by the Hon'ble Tribunal, but such action would also be unsustainable in the eyes of law. Section 8 of the BUDS Act provides that the appropriate Government shall, with the concurrence of the Chief Justice of the concerned High Court by notification, constitute one or more Courts known as the designated courts for such area or areas or such case or cases, as may be specified in such notification, which shall be presided over by a Judge not below the rank of a district and sessions Judge or additional district and sessions judge. Pertinently, Section 8(2) of the BUDS Act provides that no court other than the designated court shall have

jurisdiction in respect of any matter to which the provisions of the BUDS Act apply.

- l) The present complaint is liable to be rejected as the present transaction between the complainants 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 34 of the said MOU, which is a prospective clause, making the terminated MOU, in its nature, determinable.
- m) 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 complainants in view of the bar under Section 14(d) of the Specific Relief Act, 1963.
- n) 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.

- o) That the complainants 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 Memorandum of Understanding was executed with the complainant for provisional allotment of space admeasuring 1,000 sq. ft on investment return plan in the proposed IT park project of the respondent. The said MOU dated 01.06.2012 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 1000 sq. ft. was Rs. 32,00,000/- exclusive of EDC/IDC, EEC, Interest Free Maintenance Security, Power Back up charges, Service Tax and such other levies/cesses/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 complainants made payments amounting to Rs. 32,00,000/-. However, in addition to the above additional cost the complainants were 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 in terms of the said MoU.
- p) 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 complainants 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. 60/- per sq.ft of the super area from 01.06.2012 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 complainants 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 complainants and it is for the purpose of leasing to third parties along with combined units as larger area. The complainants 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. 42,60,000/- for a period of approximately 6 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 complainants for the reasons stated in the present reply.

- q) That the inability of the respondent to pay any further amount due to change in legislation was duly communicated to the complainants and the respondent no.1 is not liable to pay any amounts towards assured return

to the complainants 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 complainants in addition to the basic sales consideration, the complainants were also supposed to make other payments in accordance with clause 7, 8 and 9 of the MOU.

- r) That the complainants have made a payment of Rs.32,00,000/- till date. Further, an amount of Rs.4,94,600/- is pending at their end towards payment of EDC/IDC for which a demand letter dated 08.08.2018 was issued by the respondent and an amount of Rs. 33,600/- is pending at their end towards payment of value added tax for which a demand letter dated 10.12.2016 was issued by the respondent. It is submitted that despite the demand of EDC/IDC having been raised by the respondent, the complainants 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 complainants were very well aware about the same. Since the complainants himself defaulted in making timely payment of the dues, hence the complainants are not entitled to any relief whatsoever.
- s) That further, the complainants had entered into a memorandum of understanding dated 01.06.2012 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 08.08.2020 the complainants sold the space allotted to him to M/S ANJ Real Estate Investments. By way of the said agreement to sell the complainants has transferred and conveyed all his rights, titles and interest in the said unit to M/S ANJ Real Estate Investments.
- t) That since the complainants have sold the unit in question to a third party even before filing of the present complaint, the complainants have no

interest, right or title in the said unit and hence is entitled to no relief by the Authority. The complainants do 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 complainants does not fall under the definition of the term allottee, the complainants have no locus to file the present complaint. The complaint filed by the complainants are 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.

- u) That the construction of the project is complete in all respects but the unit of the complainants could not be and cannot be leased out as every prospective lessee requires the leased premises to be free from all encumbrances.
- v) That without prejudice to the submissions made herein above, it is stated that the complainants are not entitled to any relief what so ever from the Authority for the very fact that it is categorically agreed between the complainants and the respondent under clause 40 of the said MoU that in no event and under no circumstance, the maximum liability of the respondent on any account what so ever shall exceed the amount received by the respondent from the complainants pursuant to the said MoU nor the entitlement of the complainants on all accounts together, including refund, interest, damages, etc. shall exceed the amount paid by the complainants to the respondent. Admittedly, the complainants had paid Rs. 32,00,000/- to the respondent in pursuant to the said clause 40 of the

said MoU, the complainants by no stretch or imagination or under any law entitled to any further amount from the respondent.

- 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 complainants after properly understanding each and every clause contained in the MOU. The complainants were neither forced nor influenced by the respondent to sign the said MOU. It was the complainants who after understanding the clauses signed the said MOU in his complete senses.
- x) That as per clause 5 of the MOU dated 01.06.2012 it was agreed that the respondent will pay an assured return at the rate of Rs. 60/- per sq.ft of the super area from 01.06.2014 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 complainants were paid assured return amounting to Rs. 42,60,000/- for a period of approximately 6 years (i.e. till April 2018). The alleged cause of action if any arose in June 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 complainants 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 4 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 complainants are 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 complainants 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 complainants 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 complainants has transferred and conveyed all his rights, titles and interest in the said unit to M/S ANJ Real Estate Investments. Vide letter dated 04.09.2020 M/S ANJ Real Estate Investments informed the respondent regarding the execution of agreement to sale with the complainants and that with the execution of said agreement with the complainants have stepped into the shoes of the complainants. 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 08.08.2020 between the complainants and M/s ANJ Real Estate Investment. However, the complainants have filed a reply to application for impleadment of M/s ANJ Real Estate Investment and submitted that a term sheet dated 30.01.2020 and the agreement to sell dated 08.08.2020 was executed between

applicant and complainants. The said deal became null and void in terms of serial no. 9 of agreement to sell due to failure or non-fulfilment of terms and condition on time by the applicant.

14. It is relevant to reproduced Clause 3 of the Agreement to Sell dated 08.08.2020 which leads down the primary obligations of the parties:

"That as per mutual consent by the both parties the second party shall make the payment to first party on or before 30.04.2020 which was also last date for execution of sale/conveyance/ transfer deed. But due to pandemic attack of Covid-19 it has been decided that the date of sale/conveyance/ transfer deed shall be executed on or before 30.11.2020 with the following payment plan and T&C..."

The Authority finds that no sale/conveyance/transfer deed has been executed between the parties consequent to the agreement to sell. Thus, in such a situation M/s ANJ Real Estate Investment cannot claim to have stepped into the shoes of the complainant/allottee and be added as a party in the complaint. In the view of the above, the application in this regard by the respondent being without merit is dismissed and the objection of the respondent with respect to non-joinder of M/s ANJ Real Estate Investment being necessary party stands rejected.

15. It is, however brought to the notice of the Authority that M/s ANJ Real Estate Investment have filed a civil suit no. 3405/2024 in the district court, Gurgaon which is still under adjudication. In view of the above, the directions of the Authority shall be subject to the final outcome of the said civil litigation.

G. Findings on the relief sought by the complainants.

G.I Direct the respondent to handover of peaceful possession of "IT Park Office Space" measuring area of 1000 sq. ft. in the project.

16. In the present case, there is no clause in either the MoU or the buyer's agreement stating that the respondent had promised to hand over physical

possession of the said office space to the complainants. Therefore, no direction is issued in this regard.

G.II Direct the respondent to make pending payment from May 2018 to till the date of assured return/investment return of Rs.60/- per sq.ft. per month to the complainants in terms of the agreement dated 01.06.2012.

17. The complainants are 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)(l)(iii) of the Act of 2019. Thus, the plea advanced by the respondent is not sustainable in view of the aforesaid reasoning and case cited above.

18. 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-allottees has a right to approach the authority for redressal of his grievances by way of filing a complaint.

19. 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 complainants 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, which is reproduced below for the ready reference:

Clause 5- The Developer will pay Rs. 60/- per sq. ft. per month on 1000 sq. ft. as an assured return to the intending allottee from 01.06.2012 till the completion of the Said Project. Thereafter, the Developer shall pay Rs.50/- per sq. ft. per month on 1000 sq. ft. as assured return till the Said Unit is leased out to the prospective lessee(s)

20. Thus, the assured return is payable @60/- per sq.ft. per month w.e.f. 01.06.2012, till the completion of the said project. Thereafter, the developer

shall pay Rs.50/- per sq. ft. per month on 1000 sq. ft. as assured return till the said unit is leased out to the prospective lessee(s).

21. On consideration of the documents available on the record and submissions made by the parties, the complainants have 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.60/- 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 April 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.
22. 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.60/- per sq. ft. per month from the date the payment of assured return has not been made i.e., May, 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 leased out to the prospective lessee. Further, the said assured rentals are payable in terms of the MoU dated 01.06.2012 subject to the maximum liability clause as provided in clause 40 of the MOU.
23. 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 complainants 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 execute title documents with proper unit allotment in favour of the complainants pertaining to "IT park office space" measuring area of 1000 sq.ft.in the said project.

24. As far as relief of execution of title documents with proper unit allotment is concerned, this Authority is of the view that there is an MoU which already stands executed inter se parties on 01.06.2012 and the said MoU contains clauses that clearly contains the terms and conditions agreed inter se. Herein, the grievance of the complainants pertains to allocation of proper unit no. as the said MoU dated 01.06.2012 does not bear any details pertaining to the unit allotted to the complainants like unit number or floor or tower. Therefore, the respondent is directed to execute the title documents which contains proper unit details.
25. With respect to the conveyance deed, clause 28 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.
26. 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."

27. 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 complainants as per norms of the state government.

G.IV Direct the respondent to produce all the relevant licenses and approvals, including completion certificate and OC pertaining to project being "Spectrum One IT Park, at Sector 58, Gurugram, Haryana.

28. As per Section 11(4)(b) of the RERA Act of 2016, developers are mandated to provide allottees with sanctioned plans, layout plans, and specifications at the time of booking and the issuance of the allotment letter. This disclosure ensures that homebuyers have comprehensive information about the proposed project from the outset. So, the respondent-builder is directed to provide all the necessary approvals obtained from the competent authority to the RWA.

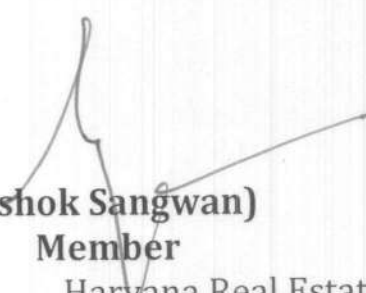
H. Directions of the authority

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

- I. The respondent is directed to pay the amount of assured return at the agreed rate i.e., @ Rs.60/- per sq. ft. per month from the date the payment of assured return has not been made i.e., April 2018 till the date of completion of building i.e., 06.09.2019 and thereafter, Rs.50/- per sq. ft.

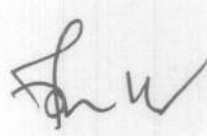
per month till the said unit is leased out to the prospective lessees subject to the maximum liability clause 40 of the MoU dated 01.06.2012.

- 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 @ 8.85% p.a. till the date of actual realization.
 - III. The respondent is directed to provide the copy of Occupation Certificate dated 06.09.2019 to the respondent within a period of 30 days.
 - IV. The respondent is directed to execute the conveyance deed within next 30 days after payment of stamp duty charges by the complainants.
 - V. The respondent shall not charge anything from the complainants which is not part of the MoU executed between the parties on 01.06.2012.
 - VI. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
 - VII. The directions of the Authority shall be subject to the final outcome of the civil suit no. 3405-2024.
30. Complaint stands disposed of.
31. File be consigned to registry.



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
09.09.2025



(Arun Kumar)
Chairman