BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of decision:	12.08.2025

NAME OF THE BUILDER		SPLENDOR BUILDWELL PRIVATE LIMITED	
PROJECT NAME		SPECTRUM ONE, SECTOR 58, GURUGRAM, HARYANA	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/3852/2022	Neeru Verma & Nidhi Verma V/s Splendor Buildwell Pvt. Ltd.	Sukhbir Yadav, Adv. (Complainants) Shriya Takkar, Adv. (Respondent)
2.	CR/3853/2022	Alka Verma & Neetu Verma V/s Splendor Buildwell Pvt. Ltd.	Sukhbir Yadav, Adv. (Complainants) Shriya Takkar, Adv. (Respondent)

CORAM:	
Shri. Arun Kumar	**Chairperson**
Shri. Ashok Sangwan	**Member**

ORDER

1. This order shall dispose of both the complaints titled as above filed before this authority in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for

all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the projects, namely, 'Spectrum One' being developed by the same respondent promoters i.e., M/s Splendor Buildwell Pvt. Ltd.

3. The details of the complaints, reply to status, unit no., date of agreement, & allotment, due date of possession, offer of possession and relief sought are given in the table below:

Project Name and Location	"Splendor Spectrum One", Sector-58, Gurugram, Haryana.
Nature of the project	Commercial complex
Area of the project	6.775 acres
DTCP License no.	82 of 2010 dated 12.10.2010 Valid up to 29.05.2020 Licensed area- 6.775 acres
RERA registered or not	Registered vide registration no. 376 of 2017 dated 07.12.2017 Valid up to 31.12.2018
Occupation Certificate	06.09.2019
DTCP License no.	82 of 2010 dated 12.10.2010 Valid up to 29.05.2020 Licensed area- 6.775 acres

S.No.	Particulars	Details in CR/3852/2023	Details in CR/3853/2023
1.	**Complaint filed on**	01.09.2023	01.09.2023
2.	**Reply filed on**	15.07.2025	15.07.2025
3.	**Date of BBA**	11.05.2015 (page 55 of complaint)	26.12.2014 (page 47 of complaint)
4.	**Unit No./Office Space**	525, block B admeasuring 485 sq. ft. [Page 58 of complaint] [Page 20 of complaint]	522, block B admeasuring 1230 sq. ft. [Page 39 of complaint] [Page 20 of complaint]
5	**Date of MoU**	08.05.2015	26.12.2024

6.	**Assured return clause as per MOU executed inter se parties**	*That the developer will pay Rs. 70/- per sq. ft. per month subject as an assured return to the allottee from 1st June 2015* ***till the completion of the said complex*** *(after obtaining OC). Thereafter, the developer* ***will pay Rs. 58/- per sq.ft. per month as assured rental till the said unit is leased out to the prospective lessee(s).*** *The said assured return shall be payable to allottee(s) in 55:45 share to first and second applicant respectively. The Developer shall issue post-dated cheques favoring the allottee for financial year for the above said assured return in the last week of March every year. [Page 47 of complaint].*	*5. That the developer will pay Rs. 70/- per sq. ft. per month subject as an assured return to the allottee from 1st June 2015* ***till the completion of the said complex*** *(after obtaining OC). Thereafter, the developer* ***will pay Rs. 58/- per sq.ft. per month as assured rental till the said unit is leased out to the prospective lessee(s).*** *The said assured return shall be payable to allottee(s) in 55:45 share to first and second applicant respectively. The Developer shall issue post-dated cheques favoring the allottee for financial year for the above said assured return in the last week of March every year. [Page 47 of complaint].*
7.	**Assured return paid by the respondent to complainants**	₹12,22,200/- [Page 12 of complaint] w.e.f. June 2015 till 30.09.2018 [Page 13-14 of reply] [Additional Documents filed by the respondent on 29.09.2023]	₹ 30,22,110/- [Page 11 of complaint] w.e.f. Jan 2015 till 30.01.2019 [Page 13-14 of reply]
8.	**Due date of possession**	10.05.2019 [42 months with the grace period of 6 months]	26.12.2018
9.	**Total sale consideration**	₹15,52,000/- [page 40 of complaint]	₹ 39,97,500/- [page 39 of complaint]
10.	**Total amount paid by the complainants**	₹16,09,548/- [Page 47 of complaint]	₹ 30,22,110/- [Page 26 of complaint]
11.	**Occupation certificate**	06.09.2019 [Page 78 of complaint]	06.09.2019 [Page 176 of reply]

12.	**Offer of possession**	Not made	Not made
13.	**Relief sought by the complainants**	i. Physical possession ii. Execute BBA iii. Execute CD iv. Assured return as per MOU v. DPC	i. Physical possession ii. Execute BBA iii. Execute CD iv. Assured return as per MOU v. DPC

4. The facts of all the complaints filed by the complainants/ allottees are also similar. Out of the above-mentioned cases, the particulars of lead case ***CR/3852/2023 titled as Neeru Verma and Nidhi Verma V/s M/s Splendor Buildwell Pvt. Ltd.*** are being taken into consideration for determining the rights of the allottees qua assured return, delay possession charges, physical possession and conveyance deed.

A. **Unit and project related details**

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

CR/3852/2023 titled as Neeru Verma and Nidhi Verma V/s M/s Splendor Buildwell Pvt. Ltd

S. No.	Heads	Information
1.	Name and location of the project	"Splendor Spectrum one", Sector 58, Gurugram, Haryana.
2.	Nature of the project	Commercial complex
3.	Area of the project	6.775 acres
4.	DTCP License	82 of 2010 dated 12.10.2010
	valid upto	29.05.2020
5.	RERA registered/ not registered	376 of 2017 valid up to 07.12.2017
6.	Application form	08.05.2015 (page 35 of complaint) [Page 16 of complaint]
7.	Unit details	525, block B admeasuring 485 sq. ft. [Page 58 of complaint]

8.	Date of execution of builder buyer's agreement	11.05.2015 (page 55 of complaint)
9.	Time period for completion of the project as per clause 9.2 of BBA dated 11.05.2015	That the Company shall, under normal circumstances, **complete the construction** of said Tower in which the said unit is located within a period of **42 months with the 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 in accordance with the said approved plans and specification seen and accepted by the Allottee (with additional floors with space if permissible) with such additions, deletion , alterations, modifications in the layout plans, change in number, dimensions, height, size, area or changes are required after execution of the sale/conveyance deed, then in order to implement those, any supplementary deed/agreement, if necessary, will be executed and registered by the company. In case the same are warranted prior to the execution of the sale/conveyance deed, company's intimation to the allottee shall be enough...(Emphasis supplied*)*
10.	Due date of possession	10.05.2019
11.	Assured return clause as per MoU dated 08.05.2015	5. That the developer will pay Rs. 70/- per sq. ft. per month subject as an assured return to the allottee from 1st June 2015 till the completion of the said complex (after obtaining OC). Thereafter, the developer will pay Rs. 58/- per sq.ft. per month as assured rental till the said unit is leased out to the prospective lessee(s).

		The said assured return shall be payable to allottee(s) in 55:45 share to first and second applicant respectively. The Developer shall issue post-dated cheques favoring the allottee for financial year for the above said assured return in the last week of March every year. [Page 47 of complaint]
12.	Total consideration	₹15,52,000/- [page 40 of complaint]
13.	Total amount paid by the complainants as per clause 4 of MoU dated 08.05.2015	₹16,09,548/- [Page 47 of complaint]
14.	Assured return paid	₹12,22,200/- [Page 12 of complaint] w.e.f. June 2015 till 30.09.2018 [Page 13-14 of reply]
15.	Offer of possession to the complainants	Not offered
16.	Occupation Certificate	06.09.2019 (annexure P-6, page 78 of complaint)

B. Facts of the complaint

6. The complainants have made the following submissions in the complaint:

a. That December 2014 the complainants Neeru Verma received a marketing call from a real estate agent, who represents himself as an authorized agent of the Respondents, and marketed a commercial project namely "Splendor Spectrum One" situated at Sector – 58, Gurugram. The complainants along with family members visited the project site and local office of the respondent along with the real estate agent and interacted with the marketing staff and office bearers of the respondent. The marketing staff of the respondent allured the complainants with the proposed specifications and assured that committed assured return will be paid by the respondent to the complainants till the completion of construction of the said building and thereafter committed return of

Rs.70/- per sq. ft. per month on the super area from the date of completion of construction of the said building.

b. That, believing on the representation and assurance of respondents, on 08.05.2015, the complainants booked a commercial unit bearing unit no. 525 in tower no. B, 5th floor in commercial building "Splendor Spectrum One", Sector-58, Gurgaon measuring 485 sq. ft. super area for a basic sale price of Rs. 16,09,548/- and signed a pre-printed application form and issued two cheques of Rs.5,00,000/- & Rs.2,24,297/- dated 08.05.2015 drawn on SBI, Delhi. It is highly pertinent to mention here that at the time of booking the compliant has paid the entire sale consideration of the unit in advance.

c. That on 08.05.2015, respondent no. 2 executed an MOU with the allottees namely Neeru Verma & Nidhi Verma of commercial unit no. 525 of 5th Floor, at tower – B, for size admeasuring 485 sq. ft of super area.

d. That as per the terms and conditions of said MOU the respondents assured the complainants that – "the developer will pay Rs. 70/- per sq. ft. per month for the subject unit as an assured return to the allottee from 1st Jan 2015 till the completion of the said complex. Thereafter, the developer will pay Rs. 58/- per sq. ft. per month as assured rental till the said unit is leased out to the prospective lessee(s). The developer shall issue post-dated cheques favouring the allottee for financial year for the above-said assured return in the last week of March every year.

e. That on 11.05.2015, a pre-printed and arbitrary space buyer's agreement was executed between the complainants & the respondents. Said agreement was executed without allowing the allottees to any time to go through the terms and conditions carefully, and hastily made them sign a space buyer agreement. This was done in such a hurried manner, without allowing the complainants to read the agreement. As per clause 9.2 of SBA, the respondent has to handover possession of the unit within a period of 42 months with a grace period of 6 months from the date of execution of this agreement or the start of construction of the tower where in the said unit is located whichever is later in accordance with the said approve plans. The due date of delivery of possession according to the SBA is 11.05.2019.

f. That as per the best knowledge of the complainants are that the respondent obtained the Occupation Certificate for tower – B on 06.09.2019. The respondent never informed the complainants about the issuance of the OC and never offered possession to them. The respondent never disclosed the facts about any lease or registration of conveyance deed. The complainants came to know from sources that the respondent has sold excess area than the sanctioned area in the project and in the tower and floor.

g. That the complainants visited several times to the office of the respondent and had meetings with the office bearers of the respondent to get the assured return, but nothing fruitful came out. The complainants sent several letters and had whatsapp chats with the office bearers of the respondent and raised a demand for payment of assured returns pending from January2020 onwards, but there is no positive response from the respondent.

h. That as per information available on the website of the Department of Town and Country Planning, the respondent get a revised building plan from the department on 19.04.2018 i.e. after registration of the project, and the building plans get revised without consent from the allottees/complainants. As per section 14(2)(ii) the respondents/

promoters have to take written consent of at least two-thirds of the allottees, but in the present case, the respondents never take such consent from the allottees.

i. That the respondent has agreed to pay Rs. 70/- per sq. ft. per month on the super area of the said commercial unit by the way of assured return to the allottee. The respondent had paid the assured return till December 2019, and thereafter liable to pay a payment of Rs. 58/- per month till the first lease. Therefore, till August 2023, the respondents are liable to pay Rs. 15,72,273/- to the complainants and thereafter liable to pay Rs. 28,130/- per month till the first lease. Since December 2019 the complainants are regularly requesting the respondents to pay the committed assured return and also to provide a copy of the Occupation Certificate. Despite several visits and requests by the complainants, the respondent did not pay the committed assured returns as per the terms of the MOU.

j. That the respondents have assured to give committed assured returns to the complainants as per clause no. 5 of the MoU but the respondent has paid assured returns to the complainants only till December 2019 in trances and thereafter the respondents has stopped paying assured returns. The respondents are misusing their highly dominant position to harass the complainants. Despite paying the 100% sale consideration of the unit, the respondent has failed to offer possession and failed to pay the assured return.

k. That the main grievance of the complainants in the present complaint is that despite the complainants having paid more than 100% of the actual cost of the unit, the respondent party has failed to deliver the possession of the unit on promised time and till date project is without amenities and stopped paying assured return.

l. That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondent party and as such, he is liable to be punished and compensate the complainants.

m. That due to the acts of the above and the terms and conditions of the builder buyer agreement, the complainants have been unnecessarily harassed mentally as well as financially, therefore the opposite party is liable to compensate the complainants on account of the aforesaid act of unfair trade practice.

n. That the cause of action for the present complaint first time arose on 11.05.2015 when the one-sided arbitrary space buyer agreement terms were imposed on the allottees. The course of action again arose in December, 2019, when the respondent stopped paying committed assured returns to the complainants as per the buyer agreement. The cause of action again arose on various occasions, including on a) January 2020; b) March 2020; c) November 2020, d) April 2021; e) April 2022, f) August 2022; g) January 2023; h) July 2023; and on many times till date, when the protests were lodged with the respondent about its failure to pay committed assured returns. The cause of action is alive and continuing and will continue to subsist till such time as the Authority restrains the respondent by an order of injunction and/or passes the necessary orders.

C. Relief sought by the complainants:

7. The complainants have sought the following relief(s):

a. Direct the respondent to pay balance committed assured return as per MOU till December 2019 @Rs.70/- per sq.ft. per month.
b. Direct the respondents to pay the committed assured returns as per the MOU from December 2019 to till date along with the previous balance and thereafter till the first lease.
c. Direct the respondent to provide a copy of OC.
d. Direct the respondent to execute the conveyance deed.
e. Direct the respondent to handover physical possession of the unit.
f. Direct the respondent to pay the delay penalty charges with interest as per the Act.

8. On the date of hearing, the authority explained to the respondent/promoters about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

9. The respondent has contested the complaint on the following grounds by way of reply dated 15.07.2025, documents dated 04.12.2023, 27.09.2024, and Written submission dated 05.08.2025:

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 *suppressioveri* and *suggestiofalsi*. 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. 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 complainants had entered into a Memorandum of Understanding dated 08.05.2015 with the respondent no.2 and had further entered into space buyer agreement dated 11.05.2015 with the respondents in respect of allotment of virtual indivisible office space bearing no. 525, tower B in the IT Park project of the respondents by the name of 'Spectrum One' situated at Sector 58, Gurugram. However, by term sheet agreement dated 14.02.2020 the complainants sold the unit allotted to them to M/s. ANJ Real Estate Investments. By way of the said term sheet agreement the complainants have transferred and conveyed all their rights, titles and interest in the said unit and under the said MOU and said SBA to M/s. ANJ Real Estate Investments.

d. That the complaint is liable to be dismissed solely on the ground of non-joinder of necessary party. The complainants had entered into a Memorandum of Understanding dated 08.05.2015 with the respondent no.2 and had further entered into space buyer agreement dated 11.05.2015 with the respondents in respect of allotment of virtual indivisible office space bearing no. 525, tower B in the IT Park project of the respondents by the name of 'Spectrum One' situated at Sector 58, Gurugram. That however, by term sheet agreement dated 14.02.2020 the complainants sold the unit allotted to them to M/s. ANJ Real Estate

Investments. By way of the said term sheet agreement the complainants have transferred and conveyed all their rights, titles and interest in the said unit and under the said MOU and said SBA to M/s. ANJ Real Estate Investments.

e. That the complainants, in the present case is seeking relief claiming assured returns and assured rentals along with other reliefs as per the MOU and SBA executed between the parties. The complainants have failed to establish any violation of the provisions of the RERA Act, 2016 and thus the complaint needs to be dismissed at the very threshold.

f. That the complainants are praying for the relief of "assured returns" which is beyond the jurisdiction that this Authority has been dressed with. From the bare perusal of the RERA Act, 2016 it is clear that the said Act provides for three kinds of remedies in case of any dispute between a developer and allottee with respect to the development of the project as per the agreement. Such remedies are provided under Section 18 of the RERA Act, 2016 for violation of any provision of the RERA Act, 2016. The said remedies are of "refund" in case the allottee wants to withdraw from the project and the other being "interest for delay of every month" in case the allottee wants to continue in the project and the last one is for compensation for the loss occurred by the allottee. Nowhere in the said provision has the Ld. Authority been dressed with jurisdiction to grant "Assured Returns".

g. The said order dated 29.09.2022 was challenged by the allottee before the Hon'ble Allahabad High Court in Second Appeal RERA Appeal No. 86 of 2022 and the Hon'ble Allahabad High Court vide order dated 12.01.2023 was pleased to issue notice returnable at an early date. However, the operation of the impugned order was not stayed by the

Hon'ble High Court. The question of law *intera-lia* as to whether the Central Government prohibited the scheme of the assured return by bringing "The Banning of Unregulated Deposit Scheme Act, 2019" is pending now before Hon'ble High Court of Allahabad in above said RERA Appeal.

h. Thus, from the order cited hereinabove it is absolutely clear that this Hon'ble Authority does not has the jurisdiction to adjudicate upon the issues relating to provisions of assured return, in the agreement entered into between the parties for sell and purchase of unit in a real estate project.

i. That as per the MOU, the complainants were paid assured return amounting to Rs. 13,73,277/- for the period 01.06.2015 to 31.10.2018. Without prejudice to the submissions made, it is in the humble submission of the respondents 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 under the said MOU falls under the ambit of deposit and the same falls under the ambit of unregulated deposit scheme. In pursuant to the provisions of Section 3 of the BUDS Act, all unregulated deposit schemes have been barred and all such transactions which falls under the ambit of unregulated deposit schemes have to be stopped. As such, in terms of clause 22 of the said MOU, all such provisions of the said MOU are void, illegal and unenforceable under the BUDS Act, 2019. Accordingly, all 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.

j. That the definition of "deposit", as provided in the BUDS Act, bars the respondent from making any payment towards assured return with sale consideration of an immoveable property to its allottees after the enactment of the BUDS Act. It is stated that the assured returns 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 complainants 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 complainants cannot under the garb of said MOU seek enforcement or specific performance of an investment return scheme before the Hon'ble Tribunal, which is specifically barred and banned under Section 3 of The BUDS Act, hence the present complaint deems dismissal.

k. 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 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.

l. That the present claim qua enforcement of the terms of the said MOU qua assured returns is liable to be dismissed for the reason that the Authority cannot adjudicate over the subject matter of the assured returns 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.

m. The present complaint is liable to be rejected as the present transaction between the complainants and the respondents falls under Section 57 of the Indian Contract Act, 1872 ("Contract Act"). On a closer scrutiny of Section 57 of the Contract Act, it is established that the enactment of BUDS Act falls within the "specified circumstances", which renders the said MOU null and void. Thus, by no stretch of imagination, Authority or Court or Tribunal can enforce or compel any party to perform their alleged obligations under a void agreement. The specific performance of the assured return or assured rental cannot be prayed especially in view of clause 22 of the said MOU, which is a prospective clause, making the terminated MOU, in its nature, determinable.

n. That the operation of clause 5 of the MoU is illegal, inoperative and hit by Section 10 read with Section 23 of the Contract Act, 1872. Section 23 of the Contract Act makes every contract void which is unenforceable. Further by virtue of Section 23 every agreement of which object or consideration is unlawful is void.

o. That Section 56 of the Indian Contract Act, 1872 further provides for a situation where due to a supervening impossibility or illegality of the act agreed to be contractually done, becomes impossible to perform. The present situation squarely falls within the ambit of Section 56 as the agreement between the parties to provide assured return and thereafter assured rental became illegal as well as punishable upon the notification of the Banning of Unregulated Deposit Scheme Act, 2019. Pertinently, Section 3 of the Act of 2019 also bans continuing the operation of existing schemes. Thus, the respondents are prohibited from paying any amount to the complainants by virtue of the Act, 2019. Furthermore, Section 65 of the Indian Contract Act, 1872 allows a party to a contract which later becomes void to claim restitution of the benefit received by the other party but as a show of goodwill, the complainants herein are not seeking any restitution from the respondents.

p. 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. The complainants had specifically opted for investment return plan and in pursuant thereto a

Memorandum of Understanding was executed with the complainants regarding assured return and leasing of the said unit 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. Accordingly, the basic sale price of Rs. 15,52,000/. Further, the complainants were liable to pay other dues, taxes, levies and other charges as mentioned under the space buyers' agreement. Thereafter, a space buyer agreement dated 11.05.2015 was executed between the parties vide which virtual and indivisible unit no. 525 admeasuring 485 sq. ft. of super area and 295 sq.ft. of covered area on the fifth Ffloor of tower B of the IT Park Complex 'Spectrum One' situated at Sector 58, Gurugram was allotted to the complainants for basic sale price of Rs.15,52,000/- along with EDC, IDC, EEC, FFC, other charges, service tax, VAT any other statutory duty/taxes, charges, cesses etc. payable by the complainants as mentioned in clause 3.1, 3.2, 3.3, 5.1, 5.9 and 6.1 the said space buyer agreement.

q. 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. As per the terms of the MOU, it was agreed that the respondent will pay an assured return at the rate of Rs. 70/- per sq.ft of the super area from 01.01.2015 till the completion of the project. The complainants were paid assured return amounting to Rs. 13,73,277/- for the period 01.06.2015 to 31.10.2018. As per the terms of the MOU assured return was payable till the completion of construction. The respondent completed the construction in September 2018 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. Further, it was also agreed that the respondent would pay an assured return at the rate of Rs.58/- per sq.ft. of the super area as assured rental till the said unit is leased out. The complainants had further agreed that they shall neither claim the sub division in the said unit nor shall claim the physical possession of the said unit till the expiry of first lease or renewal thereof. The Banning of Unregulated Deposit Scheme Act, 2019 was notified by the Government of India on 31.07.2019. As a consequence of the above, the assured return linked to sale consideration and the assured return/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.

r. Without prejudice to the submissions made here in 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 27 of the said MOU that "in no event" and "under no circumstances", the maximum liability of the respondent no.2 on any account what so ever shall exceed the amount received by the respondent no. 1 from the complainants 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 no.2. The said clause 27 thus, places an embargo and restricts the receivables by the complainants on any whatsoever account including assured return etc. to the extent of the amount actually deposited by the complainants with the respondent no.1.

s. That the said clause 27 of the duly signed MOU between the parties fairly restricts the receivables to the intending allottee on all accounts not to exceed the amount paid by the intending allottee to the Developer. In any case once the allottee receives an amount equivalent to the amount deposited by him towards the consideration of the unit, he is effectively getting the unit free of cost and thus, stands adequately compensated as well. There is no attempt by the complainants to mitigate the losses. There is no pleading or evidence lead by the complainants to mitigate the losses and/or to prove the losses caused to them for alleged breach of clause 5 of MOU by the respondent no.2.

t. Under clause 5, the complainants were to be paid assured return and assured rental, subject however, to a maximum liability of the respondent no.2 under clause 27 of the MOU, which covered all eventualities and "on any account whatsoever" in no event and under no circumstances" could not exceed the amount received by the respondent no. 1 from the complainants, on all accounts. Accordingly, as per clause of 27 of the MOU, the liability of the respondent no.2 to pay the maximum amount of assured return to the claimant is to the extent of the total amount paid by complainants against the said unit i.e. Rs.15,52,000/-, whereas the complainants have so far received an amount of 13,73,277/- from respondent no.2 on account of assured return.

u. 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 occupation 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 complainants were required to take possession within a period of 30 days from the due date mentioned in the letter.

v. That the construction of the tower in which the unit of the complainants are situated started in the month of February 2014 and the agreement was executed between the parties on 11.05.2015. The due date of completion of the said unit comes to 11.05.2019. 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.

w. That vide letter dated 14.02.2020 M/s. ANJ Real Estate Investments informed the respondent regarding the execution of terms with the complainants herein and that with the execution of said term sheet agreement with complainants they have stepped into the shoes of the complainants. Thus, at the very first instance the locus standi of the complainants needs to be determined by the Authority.

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

11. Written submissions filed by the complainants is also taken on record and have been considered by the authority while adjudicating upon the relief sought by the complainants.

E. Jurisdiction of the Authority

12. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

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

E. II Subject-matter jurisdiction

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

> ***"Section 11(4) (a)***
> *Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be.*
> ***Section 34-Functions of the Authority:***

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

15. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants(s) at a later stage.

F. Findings on the objections raised by the respondent no.1

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

16. The respondent-promoter has raised the contention that the present complaint is liable 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. It is stated that by way of term sheet dated 14.02.2020 the complainants have transferred and conveyed all his rights, titles and interest in the said unit to M/S ANJ Real Estate Investments. Vide letter dated 14.02.2020, M/S ANJ Real Estate Investments informed the respondent regarding the execution of term sheet with the complainants and that with the execution of term sheet with complainants they 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 term sheet dated 14.02.2020 executed between the complainants and M/s ANJ Real Estate Investment. On the other hand, the complainants stated that there is no sale by the complainants, no sale deed executed and even unit was not endorsed.

17. The Authority observes that there is only a 'term sheet' dated 14.02.2020 placed on record but no proof has been placed by the respondent on record which confirms that the subject unit has been endorsed in favour of M/s ANJ Real Estate Investment. Moreover, no sale agreement has been placed on record by which the complainants has sold the unit to M/s ANJ Real Estate

Investment or executed the conditions of the so called 'terms sheet'. Furthermore, there is no document to show that any consideration has been made by M/s ANJ Real Estate Investment in respect of the unit is question. In view of the same, the application filed by M/s ANJ Real Estate Investment for impleading as necessary party was declined by the Authority vide proceeding dated 12.08.2023. Therefore, the objection of the respondent w.r.t. non-joinder of M/s ANJ Real Estate Investment being necessary party stands rejected.

18. It is, however brought to the notice of the Authority that M/s ANJ Real Estate Investment have filed a civil suit no. 2894/2024 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 pay the assured return as per MoU.

G.II Direct the respondent to pay delay possession charges.

19. 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.

20. 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 complainants-allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.

21. 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 allotee 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 complainants-allottees as per clause 5 of the MOU dated 08.05.2015 till the completion of the said project i.e.,

06.09.2019 as the respondent has obtained the Occupation Certificate on 06.09.2019. Thereafter, the complainants shall pay assured rental @Rs.58/- per sq.ft. per month till the said unit is lease out to the perspective lessee(s). However, the Authority observes that as per clause 27 of the MoU dated 08.05.2015 executed between the parties it is provided that in no circumstances the maximum lability 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 allotee on all the accounts together including refund/interest/damages etc. shall exceed the amount paid by the allottee to the developer.

II. Delay possession charges.

22. In the present complaint, the complainants intend to continue with the project and is seeking delay possession charges with respect to the subject unit as provided under the provisions of Section 18(1) of the Act which reads as under:

> ***"Section 18: - Return of amount and compensation***
> *18(1).* ***If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —***
> ....
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

23. Clause 9.2 of the buyer's agreement provides time period for completion of the project and is reproduced below:

> *9.2 "That the Company shall, under normal circumstances, complete the construction of said Tower in which the said unit is located within a period of 42 months with the 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 in accordance with the said approved plans and specification seen and accepted by the Allottee (with additional floors with space if*

permissible) with such additions, deletion , alterations, modifications in the layout plans, change in number, dimensions, height, size, area or changes are required after execution of the sale/conveyance deed, then in order to implement those, any supplementary deed/agreement, if necessary, will be executed and registered by the company. In case the same are warranted prior to the execution of the sale/conveyance deed, company's intimation to the allottee shall be enough... (Emphasis supplied)

24. The due date of possession has to be calculated from the date of execution of buyer's agreement as the date of start of construction of the tower is not provided. Therefore, the due date is calculated from the date of buyer's agreement i.e., 11.05.2015. Accordingly, the due date of possession comes out to be 10.05.2019.

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

> ***"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
> *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:*
> *Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix* **from time to time for lending to the general public."**

26. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules, ibid has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal

cost of lending rate (in short, MCLR) as on date i.e., 12.08.2025 is 8.90%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.90%.

27. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

> ***"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.***
> ***Explanation.*** *—For the purpose of this clause—*
> *(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
> *(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

28. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.90 % by the respondent which is the same as is being granted to them in case of delayed possession charges.

29. On consideration of documents available on record and submissions made by the complainants and the respondent, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be offered within a stipulated time i.e., by 10.05.2019.

30. 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?

31. 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.70/- per sq. ft. of the super area per month till the completion of the said complex. 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.33,950/- per month till completion of the building whereas the delayed possession charges are payable approximately Rs. 14,620/- 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.33,950/- till completion of construction i.e., 06.09.2019 and thereupon @ Rs.28,130/- per month. 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.

32. 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.

33. 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 complainants-allottees Rs.70/- per sq. ft. on monthly basis till completion of construction of building i.e., 06.09.2019 and thereupon @ Rs.58/- per sq. ft. on monthly basis till the said unit is put on lease. The said clause further provides that it is the obligation of the respondent to lease the premises. It is matter of record that the amount of assured return was paid by the respondent till September 2018 but later on, the respondent no.1 refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019. But that Act of 2019 does not create a bar for payment of assured returns even after coming into operation and the payments made in this regard are protected as per Section 2(4)(iii) of the above-mentioned Act.

34. 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.70/- per sq. ft. per month from the date the payment of assured return has not been made i.e., October, 2018 till the date of completion of building i.e., 06.09.2019 and thereafter, Rs.58/- per sq. ft. per month till the date said unit is put on lease and rentals are achieved by the allottee. Further, the said assured rentals are payable in terms of the MoU dated 08.05.2015 subject to maximum liability clause 27.

35. 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 @ 8.90% p.a. till the date of actual realization.

F.III Direct the respondent to provide a copy of OC.

36. As per record, the Authority finds that the respondent has obtained the occupation certificate for the said project on 06.09.20191.

37. As per Section 11(4)(b) of Act of 2016, the respondent is under an obligation to supply a copy of the occupation certificate/completion certificate or both to the complainants-allottee. The relevant part of section 11 of the Act of 2016 is reproduced as hereunder:-

> *"11(4)....*
> *(b) The promoter shall be responsible to **obtain the completion certificate or the occupancy certificate, or both**, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to **make it available to the allottees** individually or to the association of allottees, as the case may be."*

38. Even otherwise, it being a public document, the allottee can have access to the it from the website of DTCP, Haryana.

F IV. Direct the respondent to handover the actual, physical, vacant possession of the office space above said project.

39. 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.

F.V Direct the respondent to execute the sale deed in favor of the complainants.

40. With respect to the conveyance deed, clause 19 of the buyer's agreement 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.

41. 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."

42. The authority observes that OC in respect of the project where the subject unit bearing no. 525, 5th t floor tower B 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.

H. Directions of the Authority

43. 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):
    a. The respondent is directed to pay the amount of assured return at the agreed rate i.e., @ 70/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., October 2018 till the date of completion of building i.e., 06.09.2019 and thereafter, Rs.58/- per sq. ft. per month till the said unit is leased out to the prospective lessees subject to the maximum liability clause 27.
    b. 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 @ 8.90% p.a. till the date of actual realization.

c. The respondent is directed to provide the copy of Occupation Certificate dated 06.09.2019 to the respondent within a period of 30 days.

d. The respondent shall not charge anything from the complainants which is not part of the MoU and BBA.

e. 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.

f. The directions of the Authority shall be subject to the final outcome of the civil suit no. 2893/2024, 2894/2024 respectively.

44. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein details of rate of assured return, area of the unit, amount paid by the complainants allottee and amount of assured return received by the complainants is mentioned in each of the complaints.

45. The complaints as well as applications, if any, stand disposed of.

46. True certified copies of this order be placed on the case file of each matter.

47. Files be consigned to registry.

(Ashok Sangwan)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
12.08.2025