

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

Date of decision: 26.08.2025

NAME OF THE BUILDER		SPLENDOR BUILDWELL PRIVATE LIMITED
PROJECT NAME		SPECTRUM ONE, SECTOR 58, GURUGRAM, HARYANA
S. No.	Case No.	Case title
1.	CR/2064/2023	Adar Kumar Jain and Nitin Jain V/S Splendor Buildwell Private Limited
2.	CR/1567/2023	Adar Kumar Jain and Nitin Jain V/S Splendor Buildwell Private Limited
3.	CR/1568/2023	Adar Kumar Jain and Nitin Jain V/S Splendor Buildwell Private Limited
4.	CR/1586/2023	Adar Kumar Jain and Nitin Jain V/S Splendor Buildwell Private Limited
5.	CR/1587/2023	Adar Kumar Jain and Nitin Jain V/S Splendor Buildwell Private Limited
6.	CR/1631/2023	Adar Kumar Jain and Nitin Jain V/S Splendor Buildwell Private Limited
7.	CR/1632/2023	Adar Kumar Jain and Nitin Jain V/S Splendor Buildwell Private Limited
8.	CR/1656/2023	Adar Kumar Jain and Nitin Jain V/S Splendor Buildwell Private Limited
9.	CR/1657/2023	Adar Kumar Jain and Nitin Jain V/S Splendor Buildwell Private Limited
10.	CR/1670/2023	Adar Kumar Jain and Nitin Jain V/S Splendor Buildwell Private Limited
11.	CR/1671/2023	Adar Kumar Jain and Nitin Jain V/S Splendor Buildwell Private Limited

12.	CR/1712/2023	Adar Kumar Jain and Nitin Jain V/S Splendor Buildwell Private Limited
13.	CR/1713/2023	Adar Kumar Jain and Nitin Jain V/S Splendor Buildwell Private Limited
14.	CR/2058/2023	Adar Kumar Jain and Nitin Jain V/S Splendor Buildwell Private Limited
15.	CR/2059/2023	Adar Kumar Jain and Nitin Jain V/S Splendor Buildwell Private Limited
16.	CR/2063/2023	Adar Kumar Jain and Nitin Jain V/S Splendor Buildwell Private Limited
17.	CR/2075/2023	Adar Kumar Jain and Nitin Jain V/S Splendor Buildwell Private Limited
18.	CR/2076/2023	Adar Kumar Jain and Nitin Jain V/S Splendor Buildwell Private Limited
19.	CR/2088/2023	Adar Kumar Jain and Nitin Jain V/S Splendor Buildwell Private Limited
20.	CR/2097/2023	Adar Kumar Jain and Nitin Jain V/S Splendor Buildwell Private Limited
21.	CR/2098/2023	Adar Kumar Jain and Nitin Jain V/S Splendor Buildwell Private Limited
22.	CR/2133/2023	Adar Kumar Jain and Nitin Jain V/S Splendor Buildwell Private Limited
23.	CR/2134/2023	Adar Kumar Jain and Nitin Jain V/S Splendor Buildwell Private Limited
24.	CR/2139/2023	Adar Kumar Jain and Nitin Jain V/S Splendor Buildwell Private Limited
25.	CR/2140/2023	Adar Kumar Jain and Nitin Jain V/S Splendor Buildwell Private Limited
26.	CR/2142/2023	Adar Kumar Jain and Nitin Jain V/S Splendor Buildwell Private Limited
27.	CR/2143/2023	Adar Kumar Jain and Nitin Jain V/S Splendor Buildwell Private Limited

CORAM:	
Shri. Arun Kumar	Chairperson
Shri. Ashok Sangwan	Member
APPEARANCE:	
Sh. Sanjeev Sharma (Advocate)	Complainant
Sh. Shriya Takker (Advocate)	Respondent

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

S.No.	Details of all the complaints	
1.	All complaint filed on	01.05.2023
2.	Reply filed in all the complaint	24.08.2023
3.	Date of execution of MoU in all the complaints (Signed by both the parties)	07.03.2020
4.	Date of BBA (not signed by complainant)	19.08.2020
5.	Unit no(s). mentioned in MoU (27 units)	501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 512A, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527
6.	Unit no(s). mentioned in BBA (27 units) (not signed by complainant)	601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 612A, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627
7.	Assured return clause as per MOU executed inter se parties	3. Developer has assured the allottee that the building shall be leased within 6 months from the date of execution of this MoU. In case the building is not leased in stipulated time, then the developer will pay Rs. 65/- per sq.ft. per month as an assured return to the allottee from 14 th September 2020 till

		the said unit is leased out to the prospective lessee(s) and rent commencement date whichever is later.
8.	Total sale consideration	Rs. 10,98,48,000/- in respect of all the 27 units
9.	Total amount paid by the complainant	Rs. 2,00,00,000/- in respect of all the 27 units
10.	Occupation certificate	06.09.2019

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/2064/2023 titled as Adar Kumar Jain & Nitin Jain 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 complainant, date of proposed handing over the possession, date of buyer's agreement etc, have been detailed in the following tabular form:

CR/2064/2023 titled as Adar Kumar Jain & Nitin Jain V/s M/s Splendor Buildwell Pvt. Ltd

S. NO.	Particulars	Details
1.	Name of the project	Splendor Specrum One, Sector-58, Gurugram
2.	Project area	6.775acres
3.	Nature of the project	Commercial space
4.	DTCP license no. and validity status	82 of 2010 dated 12.10.2010 valid up to 29.05.2025
5.	RERA Registered/ not registered	Registered vide registration no. 376 of 2017

6.	Date of MoU	07.03.2020 (page no. 32 of complaint) For unit 501-527 (27 units)
7.	Agreement for sale	19.08.2020 (page 60 of complaint) For unit 601-627 (27 units)
8.	Unit no. as per allotment letter	501-527 (27 units) 5 th floor, South Tower-B
9.	Unit no. as per agreement	601-627, 6 th floor, South Tower B (61 of complaint)
10.	Unit area admeasuring	23,880 sq. ft.
11.	Possession clause	NA
12.	Assured return clause	3. Developer has assured the allottee that the building shall be leased within 6 months from the date of execution of this MoU. In case the building is not leased in stipulated time, then the developer will pay Rs. 65/- per sq.ft. per month as an assured return to the allottee from 14 th September 2020 till the said unit is leased out to the prospective lessee(s) and rent commencement date whichever is later.
13.	Due date of Possession	NA
14.	Total sale consideration	Rs. 10,98,48,000/-
15.	Amount paid by the complainants	Rs. 2 Cr. (alleged by the complainant)
16.	Occupation certificate	06.09.2019 (annexure 2, page 30 of complaint)

17	Cancellation of unit no. 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 515 and 516	22.12.2022
18.	Creation of 3 rd party rights	27.12.2022

B. Facts of the complaint

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

- a. In the month of January 2020, the broker (JLL Pvt. Ltd.) apprised the complainants that the aforesaid project developed by the respondent has great future prospects, the same would complete in all respects and will be leased out by the respondent very soon. The respondent along with the broker company had started negotiations with the complainants via email and shared the draft of the MOU, agreement for sale and other documents and after due negotiations the respondent agreed to sell and the complainants agreed to purchase the entire 5th floor in the said project of the respondent **total measuring 23,880 sq. ft.** consisting of **27 units** for a total sale consideration of **Rs.10,98,48,000/-** to be calculated **@ Rs.4600/- per sq. ft.** and the parties entered into an **MOU dated 07.03.2020**. In terms of the said MOU the complainants paid a sum of **Rs.5,49,24,000/-** to the respondent vide various cheques. The respondent allotted units No.**501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 512A, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527** to the complainants as per the respective area mentioned in the MOU. On the persistent request of the complainants the respondent confirmed the allotment of the said area **23,880 sq. ft.** at the



rate of Rs.4600 per sq. ft. i.e., for the total sale consideration of **Rs.10,98,48,000/-** and the receipt of the amount of Rs.2,00,00,000/- along with the allotment letter vide letter dated 10.08.2020.

- b. That the respondent further assured the complainants that the building shall be leased within 6 months from the date of execution this MOU. In case the said units are not be leased within 6 months, subsequently with every passing month the assured return to be calculated @ Rs.65/- per
- c. sq. ft., will be deducted from the amount payable by the complainants to the respondent towards remaining sale consideration. The parties had agreed to lease out the said units as per the discretion of the respondent and the complainants were only entitled to amount of rent as per the calculations stated above and also detailed in para no.7 of the MOU dated 14.03.2020.
- d. That the respondent got encashed only two cheques worth Rs.1,00,00,000/- each received earlier and did not present the remaining cheques stating that the same would be presented at the time of registration of the agreement. Same was shared by the respondent through the broker company vide email dated 12.03.2020, but the same were never executed and got registered by the respondent thereafter stating that the lease agreement would be executed directly in favour of complainants with the intending lessee and the respondent as per the MOU dated 14.03.2020.
- e. That however the respondent instead of coming forward to execute and get registered the agreement of sale regarding every unit in question as agreed to be originally sold, **offered the same area in 27 units on 6th**

floor against the similar sale consideration and sent a duly executed agreement for sale dated 19.08.2020 along with allotment letter dated 19.08.2020 regarding 27 units against the same sale consideration already received by the respondent regarding 27 units in question in each complaint on 5th floor. The complainants came to know that the 6th floor was already sold out by the respondent to some other purchasers and they had been litigating with the respondent.

- f. That the said offer of 6th floor given by the respondent was never acceptable to the complainants as the respondent very cleverly had deleted the clause of assured return of Rs. 65/- per sq.ft. and it was nothing but a clever device to cause huge loss to the complainants from the units originally agreed to be sold by the respondent on 5th floor of the project vide agreement dated 14.03.2020.
- g. That the complainants came to know that the 6th floor was already sold out by the respondent to some other purchasers and they had been litigating with the respondent. The complainants never agreed to the alleged offer of 6th floor made by the respondent as stated and they clearly and specifically informed the respondent about the same and requested to complete the formality of transfer of the said unit along with other 26 units existing on 5th floor of the projects.
- h. That the respondent and its officials through the broker had been assuring to complete the possession and registration of the entire 27 units existing on 5th floor including unit in question, but never came forward to complete the same as agreed to be sold by them and the complainants wrote email dated 15.07.2021, requesting the respondent

to complete the possession and registration of the entire 5th floor consisting of 27 units as agreed to be sold by the respondent. Another email dated 18.07.2021 was again sent in this behalf in the similar manner, but the respondent never came forward to complete the possession and registration of the units in favour of complainants.

- i. That the complainants again sent an email dated 23.08.2021 to the broker company requesting it to complete the deal. On persistent request of the complainants, the said broker again made an offer on behalf of the respondent regarding **1st floor of the project in Tower-D via email dated 27.08.2021**, further repeating the said offer the said broker also suggested that the **lease deed qua the said 1st floor can be executed very shortly**, however the complainants never agreed to the said alleged offer of the respondent.
- j. That the respondent through the said broker sent an email dated 05.11.2021 stating that the respondent is not agreeing to transfer the area in front tower i.e., 5th floor original agreed to be sold further stating that the clean availability of area is available in the area tower D and insisted the complainants to switch over upon the same.
- k. That the said alleged offer of 1st floor in tower D was also an eye wash and a malafide and dishonest act of the respondent deprive the complainants from the 27 units on 5th floor and the complainants were being befooled time and again by the respondent in league with the broker by making false representations as was clear from the discussions with the respondent, broker and the officials of the respondent.

- l. That the respondent after receiving the total amount of sale consideration of **Rs.2,00,00,000/-** at the time of the signing of **MOU dated 07.03.2020** has been miserably failed to lease out the property and execution and registration of the agreement for sale and sale deed/conveyance deed of the entire 5th floor consisting of 27 units including the unit in question as agreed to be sold by the respondent via agreement dated 14.03.2020.
- m. That the complainants are entitled to the possession of entire 5th floor consisting of 27 units including the unit in question as agreed to be sold by the respondent via agreement dated 14.03.2020, besides it the complainants are also entitled for assured return@65/- per sq.ft. per month for the entire area till handing over the possession of all the 27 units including the unit in question consisting of total 23,880 sq.ft. area and the said amount is liable to be adjusted in the remaining sale consideration to be paid by the complainants to the respondent at the time of execution and registration of conveyance deed of all the units including the unit in question and the complainants has always been ready and willing to make payment of the said amount along with the expenses for stamp and registration etc. The complainants had already got prepared draft worth Rs. 3,00,00,000/- was back on 13.06.2022 for making payment to the respondent, but the respondent never came forward to complete the transaction by execution and registration of the conveyance deed of all the 27 units including the unit in question existing on 5th floor in the project.

- n. That the present complaint is being filed regarding unit no. 510 having super area measuring 1038 sq.ft. The total sale consideration to be calculated @Rs. 46,000/- per sq.ft. agreed between the parties comes to Rs. 47,74,800/-. The respondent has already received a sum of Rs. 2,00,00,000/- against total area measuring 23880 sq.ft. regarding the total 27 units consisting of 23880 sq.ft. super area on 5th floor of tower south in the project in question. The amount proportionate to the area and the amount of assured return @Rs. 65/- sq.ft. regarding the area of unit in question is liable to be adjusted at the time of execution and registration of conveyance deed in favour of complainants on payment of stamp and registration charges etc. even though there are common documents in each complaint and the complainants are filing 27 separate complaints against each unit allotted to them as per the rules framed by Authority. However, the area, the sale consideration and the number of units have been separately mentioned and confirmed by the respondent and there is no impediment in passing appropriate orders and granting the relief as claimed by the complainants.
- o. That the amount of assured return as per the agreement dated 14.03.2020 towards the unit in question comes to Rs. 20,91,570/- w.e.f. Oct 2020 till April 2023 which is liable to be adjusted along with further amount till handing over the possession of the unit in question along with other 26 units consisting of total measuring 23880 sq.ft.
- p. That the modus operandi of the respondent and its officials have caused tremendous financial pressure upon the complainant for which the complainants are entitled to be reimbursed forthwith as well as for the

mental agony cause to the complainants by the acts, omissions and malafide act and conduct on the part of the respondent.

C. Relief sought by the complainant:

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

- a. The respondent may kindly be directed to execute and get registered the conveyance deed of the subject unit, on Fifth Floor of South Tower-B. in the project Splendor Spectrum One, Sector 58, Gurugram along with one reserved car parking on payment of remaining sale consideration found to be due after adjusting the proportionate amount from the already received amount of Rs.2,00,00,000/- and the amount of assured return to be calculated @ Rs.65 per sq. ft. per month till execution and registration of the conveyance deed and handing over the possession of the said unit along with expenses for stamp and registration charges etc.
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

- a. That at the outset, the respondent denies each and every statement, submission and contention set forth in the application to the extent the same are contrary to and/or inconsistent with the true and complete facts of the case and/or the submissions made on behalf of the respondent in the present reply to the application. The respondent further humbly submits that the averments and contentions, as stated in the application under reply, may not be deemed to have been admitted

by the respondent, save and except what are expressly and specifically admitted and the rest may be read as travesty of facts.

- b. That the unit in question i.e., unit no. 517 had been cancelled vide termination notice dated 22.12.2022, there is no privity of contract between the parties and the complainants have no right, interest, claim or concern of any nature whatsoever in the unit in question and neither are allottees of the same and therefore the complaint is infructuous. Further, the unit in question had been reallocated to M/s. Makarr Buildcon Pvt. Ltd., a company registered under the provisions of the companies Act, 1956 vide U45201RJ2007PTC024358 and having its registered office at 262, Basant Vihar, Scheme No.3, Alwar – 301001 vide agreement to sell dated 06.01.2023.
- c. 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 *supressio veri 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 application is liable to be dismissed.
- d. That initially in the third week of January, 2020 the complainant no. 1 along with the complainant no. 2 approached the respondent and by making tall claims about their investment capacities expressed their interest to buy unit nos. 501-527 admeasuring 23,880 sq. ft. of super area on the 5th floor and unit nos. 601-627 admeasuring 23,880 sq. ft. of super

area on the 6th floor respectively of tower – B (South Tower) in our project Splendor Spectrum One, Sector – 58, Gurgaon, Haryana.

- e. That the total sale consideration i.e., total price for the aforesaid 2 floors was negotiated to Rs.10,98,48,000/- each floor aggregating to Rs.21,96,96,000/- for both the floors. It was further represented by the complainants that the complainant no.1, Adar Kumar Jain will be buying the 5th floor units and the complainant no. 2., Nitin Jain will be buying the 6th floor units.
- f. That in pursuant to the aforesaid expression of interest, the complainant no. 1 had issued cheque no. 455492 dated 24.01.2020 amounting to Rs. 1 Crore as token money against unit nos. 501-527 admeasuring 23,880 sq. ft. of super area on the 5th floor and the complainant no. 2 had issued cheque no. 000312 dated 25.01.2020 amounting to Rs. 1 crore as token money against unit nos. 601-627 admeasuring 23,880 sq. ft. of super area on the 6th floor. It is also submitted that assurances were given by the complainants for making good the balance payment as per schedule and for subsequently executing the agreement for sale against the units on the 5th and 6th floor respectively.
- g. That when the company's Sales officials had reminded the complainants for making the balance payments against both the said floor(s) and for the execution of the necessary documents, the same was at the first instance brushed aside and later dilly-dallied by giving inexcusable reasons. It is only after passage of sometime that the complainants, in the first week of March, 2020 approached the company's sales official and divulged their incapacity to continue with the expression of interest of

both the said floors owing to paucity of funds, nevertheless, the complainants expressed their interest in immediately moving forward with the deal of 5th floor units jointly in the name of both complainant no.1, Mr. Adar Kumar Jain and complainants no. 2, Mr. Nitin Jain. The complainants requested the respondent for transfer of payment of Rs.1 crore made by complainant no. 2, Mr. Nitin Jain in lieu of the 6th floor units against 5th floor units and sought for execution of the agreement for sale of the same. After procuring the assent from the respondent, the complainants bearing malafide and ill intention towards the respondent, on a piece of paper brought details of 34 cheques through which the payment of Rs.3,49,24,000/- was proposed. Interestingly, only the details of the cheques were handed over, whereas the cheques were never physically handed over by making one excuse or the other, and at that point of time the respondent could not somehow understand that the sole purpose of the complainants was to block the said units for financial benefits without making balance payments due. However, believing the complainants to be bonafide and genuine investors, the respondent acceded to the said request of the complainants and bonafidely executed and handed over to the complainants, agreement for sale dated 07.03.2020 for unit nos. 501-527 admeasuring 23,880 sq. ft. of super area on the 5th floor of tower – B (South Tower) of the said project with the requisite details, requesting the complainants to sign and execute the said agreement for sale and return the respondent's copy to them. It is also noteworthy that synchronously with the execution of the said agreement for sale, the complainant no. 1 had negotiated a memorandum

of understanding dated 07.03.2020 on the terms and conditions contained therein for which it was represented by the complainants that they will make the remaining payment of Rs.3,49,24,000/-, through the 34 cheques, details of which were mentioned in the said MOU dated 07.03.2020 and the said agreement. The complainants also ensured that immediately on signing of the said agreement for sale and memorandum of understanding, the balance payment i.e., Rs. 5,49,24,000/- will be paid by them within 60 days of agreement for sale or execution of conveyance deed whichever is earlier.

- h. That the respondent had on account of covid offered a very lucrative deal to the complainants in the prime space of their project, just on the inveigle demeanour of the complainants and as a consequence thereof the respondent is now bearing the brunt of it. The terms of memorandum of understanding dated 07.03.2020 were finalized at the complainant's instance and the respondent on multiple occasions called upon the complainants for making the balance payment of Rs. 3,49,24,000/-. When the respondent company's sales official Mr. Vikas Kaushik insisted the complainants to handover the said 34 cheques amounting to Rs.3,49,24,000/- and get the same cleared and bring Mr. Nitin Jain alongside the respondent authorized representative to sign the memorandum of understanding, the complainant no.1, Mr. Adar Kumar Jain insisted that the provisional memorandum of understanding may be signed by him on behalf of Mr. Nitin Jain and by Mr. Vikas Kaushik on behalf of the authorized signatory of the company Mr. S.G. Manjunath on a temporary basis.

- i. After execution of the said MOU the respondent awaited the complainant's revert regarding further payments but the complainant's had for one reason or another avoided making the long overdue payment of Rs.3,49,24,000/- and next tranche payment of Rs. 5,49,24,000/-.
- j. That it is only when the respondent did not receive any payment regarding the confirmed arrangement with the complainants, the respondent decided to convey to the complainants that this non-payment could result into cancellation of the agreement to sell and forfeiture of the Rs. 2,00,00,000/- earnest money given by the complainants. It is only at this time when the complainants in order to wriggle out of their liabilities structuring up from the said transaction, believed it suitable to turnabout the course of the said deal, therefore, requesting the respondent to shift the units allotted to the complainants from 5th floor to 6th floor in the same tower and on the same terms and conditions representing that there is a tenant interest available with the complainants for higher floor. Unfortunately, again being sucked into the unsavoury vortex of the complainants whimsical promises and assurances, the respondent assented to the same and afforded accommodation to the complainants subject to the condition that upon issuance of the agreement for sale of the 6th floor units would have an effect of surrendering the 5th floor units allotted to the complainants, thereby reactivating the right of the respondent to re-allot and sell the same to another prospective buyer.
- k. That the respondent made and handed over to the complainants a duly executed agreement for sale dated 19.08.2020 for unit nos. 601-627 on the 6th floor in south tower B of the said project for the same

consideration, requesting them to sign and return the respondent's copy back to them which even on today's date is with the complainants only. At the complainant's request, payment of Rs.2 crore made by the complainants earlier as per details mentioned above which were mentioned in the agreement for sale of the 5th floor units and in the said MOU both dated 07.03.2020 were transferred and adjusted against the part payments under the said agreement for sale for the 6th floor units with an undertaking to pay the balance Rs.3,49,24,000/- on/or before 19.08.2020 and remaining balance of Rs.5,49,24,000/- in 60 days of agreement or execution of conveyance deed whichever is earlier.

- l. That under the aforesaid circumstances after issuance of the said agreement for sale for 6th floor units the complainants were left with no rights, interests or claims in unit nos. 501-527 located on the 5th floor and the respondent was free to reallocate the same to any third party. It is also pertinent to note that apropos to clause 1.3 (a) of the said agreement for sale dated 19.08.2020, payment of total sale consideration within the stipulated period as mentioned in the covenants of the agreement is of prime essence to this agreement. It is noteworthy to mention that the complainants strictly adhering to their true nature of hoodwinking the respondent admittedly, succeeded once again not only in defaulting but also in successfully deceiving the respondent by misrepresenting the true facts and making fallacious promises.
- m. That the complainants never showcased a prospective intent to sign and execute the formal binding agreement for sale dated 19.08.2020, rather the complainants blatantly spurned around the same, ergo making the

agreement for sale redundant by efflux of time. It is noteworthy that during the intervening period the respondent company's officials and director have had meetings with the complainants in Feb-March 2022, during which the complainants expressed desire that the respondent offers them the units located on first floor of tower – D (North Tower) of the said project. The respondent as a gesture did consider the same on revised terms in lieu of their earlier booking, however nothing fructified as the complainants were never interested in concluding and materializing any of the deal. Even after being balked at by the complainants several times the respondent always accommodated all/any requests of the complainants, in turn the complainants ceaselessly defaulted in performance of their reciprocal obligations under the aforesaid agreements executed.

- n. That all these huge accommodations were extended to the complainants upon their pleadings qua tight business position because of Covid 19 pandemic. Nonetheless the accommodations being afforded, the complainants did not deposit the payments due. It is pertinent to highlight that from market enquiries, it came to light that the complainants were not bonafide investors, but speculative traders as by showing temporary and provisional arrangement with the respondent, the complainants' covert intentions were to alienate the space to a 3rd party at a higher price without any right or consent from the respondent.
- o. After incessant thwarting of the outstanding payment by the complainants, the respondent vide termination notice dated 22.12.2022 recalled MOU and agreement to sell dated 07.03.2020, agreement for sale

dated 19.08.2022, allotment letters along with any other letters, emails, receipts, confirmation of accounts whatsoever and declared the same to be cancelled on account of obtaining the same by fraud, misrepresentation, falsification and due to grave breach of obligations and defaults committed by the complainants in an arrangement having time as its prime essence. It was further made amply clear to the complainants that they have no rights, interest, claim or concern of any nature whatsoever left in the aforesaid units both of the 5th and 6th floor and/or the MOU dated 07.03.2020 and/or in the said agreement for sale dated 19.08.2022 and/or in the said project and/or against the respondent. Thus, the complainants have now filed the instant malafide complaint with erroneous and misleading facts with the sole intention to unjustly enrich himself hence by no means entitled to seek any relief from the Authority.

- p. That since the complainants failed to make payment of outstanding amounts payable under the said MOU, they never became entitled to assured return. Without prejudice to the foregoing submissions, it is stated that the assured return linked to sale consideration as contemplated under the 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.
- q. That the respondent is entitled to compensation from the complainants for the losses and damages in consequence of the non-performance of the

said MOU/ agreement for sale by the complainants and various acts of commissions and omissions committed by the complainants. The respondent has reserved its rights to initiate necessary proceedings against the complainants for the same.

9. 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.
10. Written submissions filed by the complainants are 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

11. 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

12. 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

13. 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."*

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

F. Findings on the relief sought by the complainants

F.I. Direct the respondent to pay assured return as per terms of MoU dated 07.03.2020.

15. The complainants are seeking unpaid assured returns on monthly basis as per MoU dated 07.03.2020 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MoU. The respondent refused to pay the same by taking a plea that the complainants are not complying the terms and conditions of the MoU as well as the same is not payable in view of enactment of Banning of Unregulated Deposit Schemes Act, 2019 (hereinafter referred to as the Act of 2019), citing earlier decision of the authority (***Brhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd., complaint no 141 of 2018***) whereby relief of assured return was declined by the Authority. The Authority has rejected the aforesaid objections raised by the respondent in ***CR/8001/2022 titled as Gaurav Kaushik and anr. Vs. Vatika Ltd.*** wherein the Authority while reiterating the principle of

prospective ruling, has held that the Authority can take different view from the earlier one on the basis of new facts and law and the pronouncements made by the apex court of the land and it was held that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon and the Act of 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per Section 2(4)(I)(iii) of the Act of 2019. Thus, the plea advanced by the respondent is not sustainable in view of the aforesaid reasoning and case cited above.

16. The money was taken by the builder as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the complainant-allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.
17. Upon consideration of the documents available on record and the submissions made by both the complainants and the respondent, the Authority observes that a Memorandum of Understanding was executed between the parties on 07.03.2020. As per Clause 3 of the MoU, the developer assured the allottee that the building would be leased within six months from the date of execution of the MoU. In case the building was not leased within the stipulated time, the developer would pay the allottee an assured return of Rs. 65/- per sq. ft. per

month, starting from 14th September 2020, until the said unit is leased out to a prospective lessee and the rent commencement date, whichever is later. The total sale consideration for the 27 units is Rs. 10,98,48,000/-, against which the complainant has paid an amount of Rs. 2,00,00,000/-, which is admitted by both the complainant and the respondent.

18. It is pertinent to note that, as per Clause 2(A) of the MoU dated 07.03.2020, the details of 36 cheques amounting to Rs. 5,49,24,000/- were mentioned. It was further provided that the essence of this MoU was subject to the realization of the said cheques. The complainant submitted that all 36 cheques were handed over to the respondent, but due to the respondent's fault, only two cheques amounting to Rs. 1,00,00,000/- were encashed. On the contrary, the respondent submitted that out of the agreed upfront payment of Rs. 5,49,24,000/-, a sum of Rs. 2 crores had already been paid earlier as token money. Thereafter, the complainant provided details of 34 cheques amounting to Rs. 3,49,24,000/- as the proposed payment. However, only the details of these cheques were shared, and the physical cheques were never handed over, with various excuses being made. The Authority observes that no evidentiary proof has been placed on record to show that the aforementioned cheques were realized. Moreover, it is noted that the complainant has only paid Rs. 2,00,00,000/-, and the same is admitted by both the complainant and the respondent.
19. The Authority observes that since the full payment against the consideration for purchase of the units in question was not paid/realized in terms of the MoU dated 07.03.2020, no case for payment of assured return is made out.

F.II Direct the respondent to execute sale deed for the units bearing Nos. 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 512A, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, and 527

20. The complainants are seeking the relief of execution of the conveyance deed for the units bearing Nos. 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 512A, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, and 527. However, the counsel for the respondent submitted that when the respondent did not receive any payment regarding the confirmed arrangement with the complainants, the respondent decided to convey to the complainants that this non-payment could result into cancellation of the agreement to sell and forfeiture of the Rs. 2,00,00,000/- earnest money given by the complainants. It is at this time the complainants requested the respondent to shift the units allotted to the complainants from 5th floor to 6th floor in the same tower and on the same terms and conditions representing that there is a tenant interest available with the complainants for higher floor. The respondent assented to the same and afforded accommodation to the complainants subject to the condition that upon issuance of the agreement for sale of the 6th floor units would have an effect of surrendering the 5th floor units allotted to the complainants, thereby reactivating the right of the respondent to re-allot and sell the same to another prospective buyer. At the complainant's request, payment of Rs.2 crore made by the complainants earlier as per details mentioned above which were mentioned in the agreement for sale of the 5th floor units and in the said MOU both dated 07.03.2020 were transferred and adjusted against the part payments under the said agreement for sale for the 6th floor units with an undertaking to pay the balance Rs.3,49,24,000/- on/or before 19.08.2020 and remaining balance

of Rs.5,49,24000/- in 60 days of agreement or execution of conveyance deed whichever is earlier.

21. On the other the counsel for the complainant states that the respondent got encashed only two cheques worth Rs.1,00,00,000/- each received earlier and did not present the remaining cheques stating that the same would be presented at the time of registration of the agreement. Same was shared by the respondent through the broker company vide email dated 12.03.2020, but the same were never executed and got registered by the respondent thereafter stating that the lease agreement would be executed directly in favour of complainants with the intending lessee and the respondent as per the MOU dated 14.03.2020.
22. The respondent instead of coming forward to execute and get registered the agreement of sale regarding every unit in question as agreed to be originally sold, **offered the same area in 27 units on 6th floor** against the similar sale consideration and sent a duly executed agreement for sale dated 19.08.2020 along with allotment letter dated 19.08.2020 regarding 27 units against the same sale consideration already received by the respondent regarding 27 units in question in each complaint on 5th floor. The complainants came to know that the 6th floor was already sold out by the respondent to some other purchasers and they had been litigating with the respondent.
23. That the said offer of 6th floor given by the respondent was never acceptable to the complainants as the respondent very cleverly had deleted the clause of assured return of Rs. 65/- per sq.ft. and it was nothing but a clever device to cause huge loss to the complainants from the units originally agreed to be sold by the respondent on 5th floor of the project vide agreement dated 14.03.2020.

24. However, the Authority observes that no document has been placed on record indicating that the complainant requested the merger of all units situated on the 5th floor with those on the 6th floor. In view of the above, the cancellation dated 27.12.2022 is bad and is set aside.
25. However, the Authority cannot ignore the fact that third-party rights have already been created by the respondent. Therefore, the Authority directs the respondent to allot alternate unit(s) to the complainants. If units are not available on the 5th or 6th floor, alternate units shall be allotted according to the choice of the allottee. Additionally, the complainants are entitled to seek compensation under Section 18(3) of the Act, 2016.
26. With respect to the conveyance deed, Section 17 (1) of the Act, 2016 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 has already been obtained by the respondent promoter on 06.09.2019. In view of above, the respondent shall execute the conveyance deed of the newly allotted unit(s) within 90 days upon receipt of the payment of the balance consideration and

requisite stamp duty by the complainants as per norms of the state government.

F.III Delay possession charges.

28. The respondent obtained the Occupation Certificate on 06.09.2019, which was prior to the execution of the Memorandum of Understanding. Therefore, no delay has occurred, and no case for DPC is made out.

G. 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):
- a. The cancellation dated 27.12.2022 is set aside. The respondent is directed to allot an alternate unit(s) to the complainant, if the unit(S) are not available at 5th floor and 6th floor, at the choice of the allottees.
 - b. The complainant is entitled for compensation under Section 18(3) of the Act, 2016.
 - c. The respondent is directed to execute the conveyance deed of the newly allotted unit(s) within 90 days upon receipt of the payment of the balance consideration and requisite stamp duty by the complainants as per norms of the state government.
 - d. 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.
30. 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 complainant(s)-allottee and amount of assured return received by the complainant(s) is mentioned in each of the complaints.

31. The complaints as well as applications, if any, stand disposed of.
32. True certified copies of this order be placed on the case file of each matter.
33. Files be consigned to registry.



(Ashok Sangwan)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

26.08.2025

HARERA
GURUGRAM