

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

Date of decision: 04.07.2025

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/7733/2022	Ramesh Chand Bohra and Sudesh Bohra V/s Splendor Buildwell Pvt. Ltd.	Abhijeet Gupta, Adv. (Complainant) Shriya Takkar, Adv. (Respondent)
2.	CR/7830/2022	Ramesh Chand Bohra and Sudesh Bohra V/s Splendor Buildwell Pvt. Ltd.	Abhijeet Gupta, Adv. (Complainant) Shriya Takkar, Adv. (Respondent)

CORAM:

Shri. Arun Kumar

Chairperson

ORDER

- 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.

- The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project namely, 'Spectrum One' being developed by the same respondent promoter i.e., M/s Splendor Buildwell Pvt. Ltd.
- The details of the complaints, reply status, unit no., date of agreement/MOU, 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.	Particulars	Details in CR/7733/2022	Details in CR/7830/2022
1.	Complaint filed on	19.12.2022	19.12.2022
2.	Reply filed on	17.05.2023	17.05.2023
3.	Date of MOU	20.07.2016 [Page 17 of complaint]	20.07.2016 [Page 17 of complaint]
4.	Unit No./Office Space	402 A, Tower D admeasuring 500 sq. ft. (Super area) [Page 20 of complaint]	402 B, Tower D admeasuring 500 sq. ft. (Super area) [Page 20 of complaint]

5.	Respondent offered new alternate virtual unit vide letter dated 03.02.2024 in lieu of old unit no. 402A & 402B	111, First floor, Tower D admeasuring 1000 sq. ft. As per documents submitted by the respondent on 16.02.2024	111, First floor, Tower D admeasuring 1000 sq. ft. As per documents submitted by the respondent on 16.02.2024
6.	Lease deed (in respect of unit no. 111, First floor, Tower D) dated	08.08.2023 [Page 56 of documents filed by respondent on 03.01.2025]	08.08.2023 [Page 56 of documents filed by respondent on 03.01.2025]
7.	Assured return clause as per MOU executed inter se parties	<i>That the developer will pay Rs. 71.50/- (Rupees Seventy-One and Fifty Paise Only) per sq. ft. per month subject as an assured return to the Allottee from 1st August 2016 till the first lease out. The Developer assures first lease to the prospective lessee(s) at minimum rent of Rs. 58.50/- (Rupees Fifty-Eight and Fifty paise Only) per sq. ft. per month.</i>	<i>That the developer will pay Rs. 71.50/- (Rupees Seventy-One and Fifty Paise Only) per sq. ft. per month subject as an assured return to the Allottee from 1st August 2016 till the first lease out. The Developer assures first lease to the prospective lessee(s) at minimum rent of Rs. 58.50/- (Rupees Fifty-Eight and Fifty paise Only) per sq. ft. per month.</i>
8.	Assured return paid by the respondent to complainant	Rs. 7,86,500/- till May 2018 [Additional Documents filed by the respondent on 29.09.2023]	Rs. 7,86,500/- till May 2018 [Additional Documents filed by the respondent on 29.09.2023]
9.	Due date of possession	20.07.2019 [3 years from MOU dated 20.07.2016 in view of Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018]	20.07.2019 [3 years from MOU dated 20.07.2016 in view of Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018]
10.	Total sale consideration	Rs. 15,00,000/- [As per MOU on page 20 of complaint]	Rs. 15,00,000/- [As per MOU on page 20 of complaint]

11.	Total amount paid by the complainant	Rs. 15,67,500/- [As per offer of possession letter on page 182 of reply]	Rs. 15,67,500/- [As per offer of possession letter on page 178 of reply]
12.	Occupation certificate	06.09.2019 [Page 180 of reply]	06.09.2019 [Page 176 of reply]
13.	Offer of possession of old unit no. 402A & 402B respectively	30.08.2021 [Page 182 of reply]	30.08.2021 [Page 178 of reply]
14.	Relief sought by the complainant	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 both the complaints filed by the complainants/ allottees are also similar. Out of the above-mentioned cases, the particulars of lead case **CR/7733/2022 titled as Ramesh Chand Bohra and Ms. Sudesh Bohra 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 agreement/MOU etc., have been detailed in the following tabular form:

CR/7733/2022 titled as Ramesh Chand Bohra and Sudesh Bohra V/s M/s Splendor Buildwell Pvt. Ltd.

S.no.	Particulars	Details
1.	Name of the project	"Splendor Spectrum One", Sector-58, Gurgaon

2.	Nature of the project	Commercial Space
3.	Area of the project	6.775 acres
4.	RERA registered/not registered	Registered vide registration no. 376 of 2017 dated 07.12.2017
	Validity status	31.12.2018
5.	DTPC License no.	82 of 2010 dated 12.10.2010
	Validity status	29.05.2020
	Licensed area	6.775 acres
6.	Date of MOU	20.07.2016 [page no. 17 of complaint]
7.	Unit No./Office Space	402 A, Tower D admeasuring 500 sq. ft. (Super area) [page no. 20 of complaint]
8.	Respondent offered new alternate virtual unit vide letter dated 03.02.2024 in lieu of old unit no. 402A & 402B	111, First floor, Tower D admeasuring 1000 sq. ft. As per documents submitted by the respondent on 16.02.2024
9.	Lease deed (in respect of unit no. 111, First floor, Tower D) dated	08.08.2023 [Page 56 of documents filed by respondent on 03.01.2025]
10.	Assured return clause as per MOU executed inter se parties	4. That the developer will pay Rs. 71.50/- (Rupees Seventy-One and Fifty Paise Only) per sq. ft. per month subject as an assured return to the Allottee from 1 st August 2016 till the first lease

		<i>out. The Developer assures first lease to the prospective lessee(s) at minimum rent of Rs. 58.50/- (Rupees Fifty-Eight and Fifty paise Only) per sq. ft. per month.</i>
11.	Assured return paid by the respondent to complainants	Rs. 7,86,500/- till May 2018 [Additional Documents filed by the respondent on 29.09.2023]
12.	Total sale consideration	Rs. 15,00,000/- [As per MOU on page 20 of complaint]
13.	Total amount paid by the complainants	Rs. 15,67,500/- [As per offer of possession letter on page 182 of reply]
14.	Occupation certificate	06.09.2019 [Page 180 of reply]
15.	Offer of possession of old unit no. 402A	30.08.2021 [Page 182 of reply]

B. Facts of the complaint

6. The complainants have made the following submissions in the complaint:
 - a. That pursuant to the elaborate advertisements, assurances, representations and promises made by the respondent including the brochure circulated by the respondent mentioning about the timely completion of a premium project with impeccable facilities, the complainants decided to book an office space bearing No. 402A in Tower -D in the project named "Spectrum One" located at Sector-58, Gurugram by making a payment of Rs. 15,00,000 /- towards sale

consideration of the unit vide cheque dated 20.07.2016. Thereafter, MOU was executed between the parties on 20.07.2016 whereby the respondent assigned all the rights and duties to the complainants. Subsequently, the respondent vide demand letter cum service invoice dated 05.12.2016 demanded Rs. 67,500/- towards payment of VAT from the complainants which was duly paid by the complainants.

- b. That as per the clause no. 4 of the MOU dated 20.07.2016, the respondent promised to pay the complainants an amount equivalent to Rs. 71.50/- per sq. ft. per month as an assured return to the complainants from 01.08.2016 till the first lease out of the office space. It is also further stated that the respondent had assured the complainants that the first lease to the prospective lessee will be at a minimum of Rs. 58.50 /- per sq. ft. per month.
- c. That the respondent had paid the monthly assured return to the complainants only till the month of May 2018 after which to the utter dismay of the complainants, the respondent stopped the monthly assured returns which is a gross violation of clause 4 of the MOU.
- d. That as per the clause 20 of the MOU dated 20.07.2016, the respondent was also duty bound to execute the Space Buyer Agreement in favor of the complainants. The complainants from time to time reminded the respondent to execute the Space Buyer Agreement in favor of the complainants, as they had already paid the total sale consideration towards the purchase of the abovementioned unit, but the respondent deliberately kept ignoring

the requests made by the complainants, thus violating clause 20 of the signed MOU between both the parties.

- e. That the respondent as per the clause 24 of the MOU also assured the complainants that the sale deed will be executed in the favor of the complainants in due time. But even after more than 6 years since the complainants have paid the total sale consideration, the sale deed has not been executed in favor of the complainants.
- f. That the construction of the said unit is still underway and has not been completed by the respondent even after six years of payment of the total sale consideration by the complainants. During this period, several incessant efforts were made by the complainants to seek timely updates about the status of the construction of the said unit but to the utter dismay of the complainants no satisfactory reply was given by the respondent which shows the indifferent and casual attitude of the respondent towards the complainants.
- g. That vide letter dated 26.08.2021, the respondent sent a Letter of Possession to the complainants despite the construction of the office space being incomplete and has not been put on the lease by the respondent as per the terms of the MOU. Further, the respondent demanded an additional amount of Rs. 11,56,213/- from the complainants under several unjustified heads which is against the terms and conditions of the MOU and the provisions of Act.
- h. That on the invalidity of limitation of liability clause: That, the clause purporting to cap the respondent's liability to a nominal, pre-estimated amount is unconscionable, one-sided, and contrary to the

legislative intent behind Act. It is respectfully submitted that the said clause is void and unenforceable on the grounds: (a) Contrary to Public Policy and RERA's objective; (b) Inequality of bargaining power and (c) Unconscionability and unreasonableness.

i. Hence, the present complaint.

C. Relief sought by the complainant:

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

- a. Direct the respondent to handover the actual, physical, vacant possession of the office space above said project.
 - b. Direct the respondent to execute the Space Buyer Agreement for the office space above said project.
 - c. Direct the respondent to execute the sale deed in favor of the complainants of the office space in above said project.
 - d. Direct the respondent to pay the assured return as per MoU.
 - e. 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 17.05.2023, Documents dated 29.09.2023, 16.02.2024, 05.04.2024, 02.08.2024, 03.01.2025 and Written submission dated 02.05.2025:

- a. That the complainants and the respondent entered into a Memorandum of Understanding (MOU) dated 20.07.2016 vide which virtual unit admeasuring 500 sq. ft. was provisionally allotted to the complainants on the terms and conditions contained in the MOU. As per the MOU, the complainants opted for an Investment Return Plan with payment of assured returns till the first lease of the unit, subject however to maximum liability of the respondent as per clause 36 of the MOU.
- b. That the complainants have already received Rs.7,86,250/- towards assured returns till May 2018. Thereafter, due to the enforcement of "The Banning of Unregulated Deposit Schemes Act, 2019" ("BUDS Act"), the respondent was legally restrained from continuing assured returns.
- c. That respondent completed construction of the project, applied for Occupation Certificate on 26.11.2018, and the same was granted on 06.09.2019.
- d. That it is pertinent to note that over and above the basic sale consideration of Rs. 15,00,000/- for the unit as agreed vide MOU dated 20.07.2016, the complainants were contractually liable to make additional payments towards various heads as stipulated under Clauses 5, 6, 7, and 23 of the MOU. These included, inter alia, External Development Charges (EDC), Infrastructure Development Charges (IDC), External Electrification Charges, Fire Fighting Charges, Labour Cess, IFMS, Maintenance Charges, increased sale consideration as per clause 16 of the MOU and costs towards fit-outs

and interiors. Such charges were in addition to the basic sale consideration and were payable proportionately by the complainants in accordance with the provisions agreed upon under the MOU.

- e. That vide possession letter dated 30.08.2021, the respondent offered possession of the subject unit to the complainants. In the said communication, the respondent specifically apprised the complainants regarding the enforcement of "The Banning of Unregulated Deposit Schemes Act, 2019" (BUDS Act), informing them that any further payment of assured returns would be impermissible and illegal. The respondent further explicitly informed the complainants about the outstanding dues payable, which included Rs. 12,16,213/- towards pending dues under the MOU, Rs. 1,00,000/- towards Interest Free Maintenance Security (IFMS), along with other statutory and ancillary charges. Despite such comprehensive intimation and repeated follow-ups, the complainants failed to clear their outstanding dues, execute the conveyance deed, or take possession, thereby disentitling themselves to any equitable relief before this Hon'ble Authority.
- f. That vide letter dated 03.02.2024, the respondent offered an alternate leased Unit No. 111 within the same project, in lieu of the originally allotted Virtual Units No. 402A and 402B, which was already under lease to a reputed tenant, Pixel Pay Media Pvt. Ltd. The complainants were informed vide letter dated 03.02.2024 that the unit bearing no. 111 forms a part of larger area and the same has

been leased out to M/s. Pixelpay Media Pvt. Ltd. The complainants were requested to pay their pending dues towards fit out cost, finishing works, EDC/IDC, external electrification charges/EEC, additional fire-fighting charges/FFC, labour cess and IFMS. Further, the complainants were also informed that as per Clause 16 of the MOU, in case the lease rental charged is more than Rs.58.50/- per sq. ft. then the allottee shall pay a sum calculated at Rs. 61/- per sq. ft. of the super area for every one rupee increase in lease rental over and above Rs.58.50/- per sq. ft. per month.

- g. That this offer was made in good faith and with the sole intention of amicably resolving the dispute, mitigating grievances, and facilitating conveyance and an effective return on investment for the complainants in accordance with the investment model under the MOU. The offer made to the complainants vide letter dated 03.02.2024 was accepted by them in Open Court and the same was formally recorded by the Authority in its order dated 23.02.2024.
- h. That despite such bonafide steps, the complainants failed to act upon the same, demonstrating their lack of bona fide and intent to resolve the matter. That the complainants, despite repeated reminders, failed to clear outstanding dues, execute the conveyance deed, or fulfill their contractual obligations.
- i. **LIABILITY OF THE RESPONDENT DEVELOPER TO PAY ASSURED RETURN IS LIMITED TO THE EXTENT AS UNDERTAKEN IN THE CLAUSE 36 OF MOU:**
 - That it is pertinent to mention herein that the liability of the respondent developer to pay assured return has to be limited to as undertaken in the contract i.e. Clause 36 of the MOU entered into

between the parties. That Clause 36 of the MOU states that in no event and under no circumstances the maximum liability of the applicant developer on any account whatsoever shall exceed the amount received by the developer from the intending allottee pursuant to the MOU and conversely nor the entitlement of the intending allottee on all the accounts together including refund/interest/damages **etc.** shall exceed the amount paid by the intending allottee to the developer. Meaning thereby, that the receivables by the intending allottee from the respondent developer on any account whatsoever which includes assured return shall in no event and under no circumstances exceed the amount received by the developer from the intending allottee i.e. the complainants herein. The said Clause 36 thus, places an embargo and restricts the receivables by the complainants allottees on whatsoever account including assured return etc. to the extent of the amount actually deposited by the latter with the developer.

- That the complainants have not established any basis to go beyond the capping fixed under clause 36 of the MOU.
- That the Full Bench of this Hon'ble Authority has considered the maximum liability and upheld the same vide order dated 22.10.2024 in the Complaint No. 4219/2022 titled as Sushila Tiwari vs. Splendor Buildwell Pvt. Ltd. Copy of the said order is annexed.
- That this Hon'ble Authority in Complaint no. 5082 of 2021 titled as Vishal Narula vs. Splendor Buildwell Pvt. Ltd. while upholding the maximum liability clause of the MOU was pleased to pass the order dated 13.08.2024. Copy of the said order is annexed.
- That it is further important to mention here that the respondent's first argument qua the assured return still remains its inability to pay assured return in view of the embargo placed upon by the Banning of Unregulated Deposit Scheme Act, 2019 and vulnerability of the applicant respondent to prosecution in case assured return and assured rental is paid after coming into force of BUDS Act, 2019 amongst other submissions and arguments in this regard. Without

prejudice to the submissions / contentions raised by the respondent qua in the reply filed by them qua non payment of assured return, the respondent is willing to make payment of balance amount of assured return to the extent of capping fixed under clause 36 of the MOU i.e. Rs.7,13,500/- in the complaint, which may kindly be directed to be adjusted against the outstanding dues payable by the complainants as stated above.

j. **MOU BEING A COMMERCIAL CONTRACT, ITS TERMS HAVE TO INTERPRETED IN THEIR TRUE SENSE:**

- That it is further important to note that the MOU entered into between the parties, being a creature of an agreement between the allottee and the developer, has to be interpreted in its true sense i.e. giving actual meaning to the words contained in the MOU. It is submitted that the court cannot interpret the meaning of the words in the MOU in a way that would amount to rewriting of the terms of the MOU.
- That it is important to point out here that the said MOU is not a simple Builder Buyer Agreement. The said MOU is a formula-based contract admittedly superseding the sale agreement. The following are some of the salient features of the MOU:
 - Terms of the MOU transpires that it is a purely negotiated contract. Respondent developer has on day one admitted liability to pay the assured return equivalent to the amount received by it from the allottee. As such the allottee is equally compensated and is also getting the property which is leased out.
 - No Sale Consideration is fixed.
 - Sale Consideration is directly related to leasing obligations as agreed under clause 15 & 16 of MOU.
 - Under Clause 11 of the MOU, complainant allottee had agreed that said unit is not for the purpose of self-occupation and use by him and it is for the purpose of leasing to third parties along with combined units as larger area.
 - Under Clause 14 of the MOU, allottee had inter alia waived his right to seek physical possession at present and in future and shall

never seek division of the said unit from the larger area / combined units.

- Under clause 15 & 16 of the MOU the understanding between the both the parties was crystal clear that this was a business restriction.
- Clause 4 of the MOU has to be read with clause 36 of the MOU under which the projected revenue was fixed on day one. This is pure commercial contract.
- The transaction envisaged between the party under the said MoU is not a pure property sale.

k. **OPEN EYE CONTRACT:** That the MOU was signed by both the parties with open eyes and hence both the parties must accept the burden of the MOU along with its benefits. Reciprocal rights and obligations arising out of the MOU do not depend for their enforceability upon whether the allottee finds it prudent to abide by the terms of the MOU. The parties, with their eyes widely open, had entered into the contract for sale of the Unit which was subject to the terms and conditions clearly spelled out in MOU; that in furtherance of the MOU, payment was made by the allottee and assured return was paid by the developer to the allottee. In other words, both sides had acted on the basis of the MOU, changing their respective positions and assuming rights and obligations against each other. The MOU having been acted upon; it could not be unilaterally abrogated on the sweet will of any of the parties. Therefore, in terms of the MOU the maximum liability of the developer is limited to the extent as mentioned under Clause 36 of the MOU.

- l. **CLAIM FOR PHYSICAL POSSESSION IS CONTRACTUALLY BARRED SINCE THE UNIT IN QUESTION WAS NOT MEANT FOR SELF-OCCUPATION BUT FOR LEASING OUT TO THIRD PARTIES:**
- That the complainants' prayer seeking handover of actual, physical, and vacant possession of the office unit in the project is contractually barred and factually untenable. As per Clause 11 of the Memorandum of Understanding dated 20.07.2016, the complainants expressly agreed that the allotted unit constituted a virtual, undivided, and non-physical portion of a larger demised premises and that the same was not intended for self-use or individual occupation.
 - That further, under Clause 12(f) and Clause 14 of the MOU, the complainants explicitly waived their right to claim individual or segregated possession of the unit. The entire concept under the investment return plan was that possession and occupation would remain with the Lessee, and the allottees would be entitled to returns linked to lease and commercial yield.
 - That most importantly, the complainants were offered an alternate leased unit bearing No. 111, First Floor, Tower D, in lieu of the originally allotted virtual units no. 402A and 402B, vide letter dated 03.02.2024. The said unit had already been leased out to Pixel Pay Media Pvt. Ltd., a third-party lessee. The complainants, with full knowledge of the same, voluntarily accepted the said alternate unit, as duly recorded in proceedings and orders of this Hon'ble Authority dated 05.01.2024 and 23.02.2024 respectively.
 - That therefore, the prayer for physical possession is not only contrary to the contractual framework agreed by the complainants, but also stands satisfied to the extent permitted under law. The complainants are now estopped from raising this relief, having accepted the lease model and the alternate allotment.
- m. **NO DUAL REMEDY OF ASSURED RETURN AND DELAY PENALTY:**
- That the complainants' claim for delay penalty under the RERA Act, in addition to the assured returns already received, is legally untenable. It is a settled position as upheld by this Hon'ble Authority

that a complainant cannot simultaneously claim both assured returns (being commercial in nature) and compensation for delay under Section 18 of the RERA Act. The two are mutually exclusive remedies. Having received benefits under the Investment Return Plan until May 2018, the complainants are estopped from claiming delay penalty.

n. **CONVEYANCE DEED CAN ONLY BE EXECUTED ONCE ALL PENDING DUES ARE CLEARED BY THE ALLOTTEES:**

- That the conveyance deed as per Clause 24 of the MOU can only be executed once all outstanding dues are cleared by the allottees.
- That the respondent vide letter dated 03.02.2024 had already offered execution and registration of the conveyance deed in favour of the complainants for unit No.111 subject to payment of final sale consideration as determined as per clause 16 of the MOU and outstanding dues as per MOU i.e. EDC/IDC, EEC, additional firefighting charges and labour cess. IFMS is also due as per MOU. The respondent had also sent draft of settlement deed & conveyance deed to the complainants.
- That the space allotted to the complainants had already been given on lease to a reputed lessee in a fully fitted out condition the cost & expenses of which has been paid by the respondent on behalf of the complainants. The complainants are liable to the increased sale consideration as per clause 16 of the MOU and pay their proportionate share of the said fitout cost.

o. **COUNTER CLAIMS RAISED BY THE RESPONDENT:**

- The respondent is seeking the following mounts from the complainant:

S.No	Particulars	Total Amount Due (INR)	Clause under MOU / Nature of Charges
1	External Development Charges & Infrastructure Development Charges (EDC/IDC)	₹2,30,500/-	Clauses 5 & 7 - Towards external development and infrastructure works as mandated by statutory authorities.

2	External Electrification / Transformer / Sub-station / Equipment Charges & Diesel Generator / Cooling Tower Charges (incl. GST @ 18%) • Copy of the said Sales Circular No. D-14/2018 dated 27/03/2018 read with Sales Circular No. D-17/2018 dated 11/05/2018 to adopt 220/33/0.4 KV system instead 'of conventional 222/66/11 KV system in the new Sectors of Gurugram @ Annexure- 3 @ page no. 27-31 of application placing on record counter claim dated 03.01.2025. • Office order dated 23.06.2020 issued by HSPCB to retrofit old generator sets or shift to gas based generators @ Annexure-4 @ page no. 32 of application for placing on record counter claim filed on 03.01.2025. • Sales circular No. D-42/2016 dated 30.12.2016 issued by Dakshin Haryana Bijli Vitran Nigam Hissar read with office order No. 22/52/2005 dated 21.03.2016 issued by Renewable Energy Department Haryana Government to install solar photovoltaic power plants @ Annexure- 5(Colly) @ page no. 33-36 of application for placing on record counter claim filed on 03.01.2025. Pursuant to the above works undertaken by the Respondent and the	₹1,47,500/-	Clause 6 - Towards electrification, backup power facilities and associated infrastructure installations.
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	Complainants are being asked to pay their pro-rate share.		
3	Fire Detection / Fire Fighting System Charges / Additional Fire Scheme Work (incl. GST @ 18%) - Additional fire safety measures undertaken/being undertaken by the Respondent in the said Project was not existing in the initial fire scheme approved for the said Project. - These measures were recommended by the Fire Department under the National Building Code to be undertaken for additional fire safety of the said Project. <u>Refer National Building Code of India 2016 Vol. I. @ Annexure- 6 @ page no. 37 of application for placing on record counter claim filed on 03.01.2025.</u>	₹73,750/-	Clause 6 - Towards fire detection, firefighting, and compliance with statutory safety requirements.
4	Labour Cess	₹9,075/-	Clause 7 - Towards statutory labour welfare fund contribution imposed by authorities.
5	Interest on delayed payment @ 10.75% p.a. on Sl. Nos. 1 to 4	₹1,52,826/-	- Interest applicable on overdue amounts as per contractual terms.
6	Interest Free Maintenance Security Deposit (IFMS)	₹75,000/-	Clause 23 - Security deposit towards upkeep and maintenance of the complex.
7	Common Area Maintenance Charges from 01.09.2021 to 31.12.2023 (incl. interest @10.75%)	₹4,41,173/-	Clause 22 - Proportionate contribution towards maintenance of common areas including applicable interest.
8	Increased Sale Consideration (incl. GST of ₹49,410/-) Copy of the Lease Deed dated 08.08.2023 executed with	₹4,61,160/-	Clause 16 - Adjustment towards final sale price consequent to leasing of unit at higher rentals.

	M/s. Pixelpay Media Pvt. Ltd <u>@ Annexure- 8 @ page no.</u> <u>56-73 of application for</u> <u>placing on record counter</u> <u>claim filed on 03.01.2025.</u>		
9	Fit-out Costs (incl. GST) Respondent is not going to be benefited in any manner whatsoever with the said interior and fitouts to be undertaken in the subject unit allotted to the and ultimately, it is the Complainants only who will be enjoying the benefits of the said interior and fit outs, by way of getting the lease rents, and he will also become the owner of the fit outs and interiors under taken in the subject unit.	₹12,98,000/-	Clause 24 - Towards cost incurred for internal partitioning, fit-outs, and improvements in the unit.

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 these undisputed documents and submissions made by the parties.

11. 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

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."

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 complainant(s) at a later stage.

F. Findings on the relief sought by the complainants

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

16. The complainants are seeking the actual, physical, vacant possession of the office space booked by them. It is a matter of fact that the present complaint has been filed by the complainants regarding office space bearing no. 402A and 402B, Tower D admeasuring 500 sq. ft. each. However, during the pendency of the present complainant, the respondent offered new alternate virtual unit vide letter dated 03.02.2024 in lieu of old units. It is pertinent to mention here that during

the proceeding dated 23.02.2024, the counsel for the complainants accepted having received an offer of an alternative unit on 03.02.2024 and further stated that the same is acceptable to them. It is relevant to mention here that the alternative new unit offered by the respondent is a virtual office space bearing no. 111, admeasuring 1000 sq. ft. and the said space has already been leased out along with combined larger area admeasuring 6260 sq. ft. super area to M/s Pixel Pay Media Pvt. Ltd. Since the present complainant-allottees out of their own free will have consented to accept the new virtual office space bearing no. 111, which means that they are aware of all the consequences of the acceptance of the said alternative unit. Furthermore, as per Clause 11 of the said MOU, it was agreed between the parties that the subject unit is not for the purpose of self-occupation and use by the complainants and it is for the purpose of leasing to third parties along with combined units as larger area. The complainants had further agreed that they shall neither claim the subdivision in the said unit nor shall claim the physical possession of the unit till the expiry of first lease or renewal thereof. In view of the aforesaid, this Authority is of the view that the allottee is not entitled to physical possession of the new virtual office space bearing no. 111.

G.II. Direct the respondent to execute the Space Buyer Agreement.

G.III Direct the respondent to execute the sale deed in favor of the complainants.

17. As far as relief of execution of Space Buyer Agreement is concerned, this Authority is of the view that there is an MoU which already stands executed inter se parties and the said MoU contains clauses that clearly contains the terms and conditions agreed inter se. However, having

accepted a new unit bearing no. 111, the respondent is directed to execute a new Buyer's agreement in respect of the same.

18. With respect to the conveyance deed, clause 24 of the MoU is relevant wherein it has been clearly mentioned that the developer will execute the sale deed in favour of the intending allottee after receiving full consideration in respect of the subject unit along with other charges and receipt of completion certificate of the project from the competent authority.
19. 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."

20. The authority observes that OC in respect of the project where the new unit bearing no. 111, 1st floor tower D is situated has already been obtained by the respondent promoter. Hence, there is no reason to delay the conveyance deed of the subject unit. In view of above, the respondent shall execute the conveyance deed of the newly allotted unit within 90 days upon receipt of the payment of requisite stamp duty by the complainants as per norms of the state government.

G.IV. Direct the respondent to pay the assured return as per MoU.

21. The complainant is seeking unpaid assured returns on monthly basis as per MOU dated 20.07.2016 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 the Banning of Unregulated Deposit Schemes Act, 2019 (hereinafter referred to as the Act of 2019), citing earlier decision of the authority (*Brhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd., complaint no 141 of 2018*) whereby relief of assured return was declined by the authority. 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.

22. 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.
23. In view of the above, the builder is liable to pay that amount as agreed upon vide MOU and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement defines the builder/buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the MOU. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent is liable to pay assured return to the complainant-allottees as per clause 4 of the MOU dated 20.07.2016 till 20.07.2019 and the reasons for the same are being elaborated in the succeeding paragraphs of the present order.

G.IV. Direct the respondent to pay delay possession charges along with interest.

24. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the provisions of section 18(1) of the Act which reads as under:

"Section 18: - Return of amount and compensation"

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

*.....
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed"*

25. It is pertinent to mention here that MOU was executed inter se parties on 20.07.2016 and there is no timeline for completion of the project in the said MOU. In *Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors.* (12.03.2018 - SC); MANU/SC/0253/2018, Hon'ble Apex Court observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period or period for completion of the project stipulated in the MOU, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract. Thus, the due date of completion of the project in view of the aforementioned judgement comes out to be 20.07.2019.

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

"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

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

27. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 04.07.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
28. On consideration of documents available on record and submissions made by the complainant and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The due date of completion of construction as delineated hereinabove was 20.07.2019.
29. 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?
30. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the MOU. The rate at which assured return has been committed by the promoter is Rs. 71.50/- per sq. ft. of the super area per month from 01.08.2016 till first lease out. However, in the present matter, clause 36 of the MOU is also relevant which states that in no event and under no circumstances the maximum liability of the developer shall exceed the amount received by the developer from the intending allottee.

31. 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.
32. However, in the present matter, the respondent is obligated to pay the assured return as per clause 4 of the MOU for each of the earlier unit till the due date of possession i.e., 20.07.2019 subject to maximum liability clause 36 of the MOU and post due date of possession, the respondent is obligated to pay delay possession charges @ 11.10% p.a. on the amount paid by the complainant w.e.f. the due date of possession i.e., 20.07.2019 till the date of offer of possession of the alternative unit bearing no. 111 i.e., 03.02.2024.

DETERMINATION

33. On consideration of the documents available on the record and submissions made by the parties, the complainant has sought the unpaid amount of assured return as per the terms of MOU along with interest on such unpaid assured return. As per clause 4 of the MOU dated 20.07.2016, the promoter had agreed to pay to the complainant-allottee ₹71.50/- per sq. ft. of the super area per month from 01.08.2016 till first lease out. It is matter of record that the amount of assured return was paid by the respondent promoter till May 2018 but later on, the respondent 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. In the peculiar facts and circumstances of the present case, wherein the complainant is seeking both assured return as well as DPC, the due date of possession is 20.07.2019 and keeping in view the clause 36 of the MOU which states that in no event and under no circumstances the maximum liability of the developer shall exceed the amount received by the developer from the intending allottee, the authority is of the view that the liability of the respondent to pay assured return to the complainant shall subsist only till the due date of possession i.e., 20.07.2019 as permitting the allottee to claim both Delayed Possession Charges (DPC) and Assured Return for the same period would amount to unjust enrichment and impose double penalty upon the promoter, which is contrary to the letter and spirit of the Act of 2016. Thus, allowing both remedies simultaneously for the same cause would defeat the intent of RERA and offend the doctrine of equity.
35. 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.71.50/- per sq. ft. of the super area per month from the date the same was not paid by the respondent i.e., May 2018 till the due date of possession i.e., 20.07.2019 in respect of both the earlier units and subject to clause 36 of the MOU. Thereafter, the respondent is obligated to pay **delay possession charges @ 11.10% p.a.** on the amount paid by the

complainant i.e., Rs. 15,67,500/- w.e.f. the due date of possession i.e., 20.07.2019 till the date of offer of possession of the alternative unit bearing no. 111 i.e., 03.02.2024.

36. Further, the authority observes that the after 03.02.2024 the lease rental in respect of the new unit and the maintenance charges in respect of the new unit shall be paid by the lessee. Also, in CR/7161/2022, the Authority has held that *"the CAM charges shall be payable by the lessee once the said unit is put on lease by the respondent and the complainants are not liable to pay the CAM charges."* The Authority observes that there is no obligation of paying maintenance charges (CAM) on part of the complainants for the earlier unit also, as the earlier unit were also meant to put on lease and the new unit has already been leased to M/s. Pixelpay Media Pvt. Ltd. Hence, in view of the same, the complainants are not liable to pay maintenance charges (CAM) as claimed by the respondent vide counter claim dated 03.01.2025. Further, the complainants are also not liable to pay labor cess and electrification charges in view of findings by the Authority in complaint bearing no. CR/3611/2023 titled as Rajan Deep Vij and Ors. Vs. M/s Shine Buildcon Pvt. Ltd.

G. Directions of the authority

37. 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., @ 71.50/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., May 2018 till the

due date of possession i.e., 20.07.2019 in respect of both the earlier units and subject to clause 36 of the MOU.

- 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 @ 9.10% p.a. till the date of actual realization.
- c. The respondent is further directed to pay **delay possession charges** @ 11.10% p.a. on the amount paid by the complainants i.e., Rs. 15,67,500/- w.e.f. the due date of possession i.e., 20.07.2019 till the date of offer of possession of the alternative unit bearing no. 111 i.e., 03.02.2024.
- d. The complainants are not liable to pay CAM charges since the said unit is not for the purpose of self-occupation.
- e. The respondent shall not charge labour from the complainants' cess as it is the respondent builder who is solely responsible for the disbursement of said amount.
- f. The respondent shall not charge electrification charges from the complainants while issuing offer of possession letter of a unit even though there is any provision in the builder buyer's agreement to the contrary.
- g. Having accepted the new unit bearing no. 111, both the parties are directed to execute a new buyer's agreement in respect of the same.
- h. The respondent is directed to execute the conveyance deed in respect of the unit bearing no. 111, 1st floor tower D of the allotted

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

- i. 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.
38. 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.
39. The complaints as well as applications, if any, stand disposed of.
40. True certified copies of this order be placed on the case file of each matter.
41. Files be consigned to registry.

Dated: 04.07.2025



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory
Authority, Gurugram