



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 1037 OF 2021

Veena Sukhrani and Another

....COMPLAINANTS

VERSUS

Vatika Limited

....RESPONDENT

### COMPLAINT NO. 1038 OF 2021

Gourav Gandotra and Another

....COMPLAINANTS

VERSUS

Vatika Limited

....RESPONDENT

**CORAM: Rajan Gupta**  
**Dilbag Singh Sihag**

**Chairman**  
**Member**

**Date of Hearing:** 05.05.2022

**Hearing:** 3<sup>rd</sup>

**Present:** Mr. Shreya Narayan, ld. counsel of complainants through VC.  
Mr. Tarun Dhingra, ld. counsel for respondent through VC.



**ORDER (RAJAN GUPTA - CHAIRMAN)**

1. Captioned complaints have been taken up together for disposal since their facts are more or less identical and they relate to same project of the respondent promoter. Complaint No. 1037 of 2021 titled 'Veena Sukhrani Vs. Vatika Ltd.' has been taken as lead case and facts of this case has been taken into consideration for disposal of this bunch of complaints.

2. The case of complainants is as follows: -

- i. On the basis of brochure, representation and assurances of respondent, complainants booked a commercial apartment/unit No. 322 measuring 500 sq. ft. on 3<sup>rd</sup> floor of tower B of the project promoted by respondents at agreed consideration of ₹17,50,000/-. Complainants had made payment of ₹18,04,000/- for the unit to respondent in the year 2012 itself. Copy of payment receipts dated 05.05.2012 & 16.05.2012 are annexed as Annexure - A at page no. 18 to 20 of the complaint file.
- ii. Builder-buyer agreement for the unit was executed on 28.08.2012 (Annexure - C). Clause 15 of Agreement provides that assured return committed at the rate of ₹68.75 per sq. ft. per month i.e., ₹34,375/- per month will be paid to complainants till construction of the allotted unit is complete, and further return at the rate of ₹62.50 per sq. ft. per month i.e., ₹31,250/- for upto



3 years from the date of completion of construction of the unit or till the same is put on lease.

- iii. Complainant alleges that respondent made payment of assured returns till March 2018 but the same was stopped thereafter. Complainants further alleged that respondent had promised to complete the project by 30.12.2012 as per their letter dated 19.05.2012, but it was delayed, and occupation Certificate was granted in respect of Tower- B on 14.10.2016. Copy of the same is annexed as Annexure – G with the complaint file.
- iv. Complainants alleges that they discovered in 2021 that respondent company had time and again mortgaged entire Towers A & B of the project to various banks and financial institutions. Several mortgages were created. Chart of the mortgages has been annexed as Annexure I to the complainant file. Complainants vide letter dated 10.10.2020 sought execution of the conveyance deed but respondent has not responded to the letter. Complainant alleges that respondent did not execute conveyance deed on account of defect in his title on account of multiple mortgages done by respondent in respect of the property.
- v. Therefore, Complainant has filed present complainant being aggrieved from non-execution of conveyance deed of the units



in his favour and for this reason intends to withdraw from the project, and presses for relief of refund of total amount paid by complainants to the respondent along with delay interest as per law.

3. on the other hand, respondents have submitted in their reply that:
- i. Respondent-company has been developing the project "Vatika Mindscape" which is a commercial project consisting of four towers i.e., Tower A, B, C & D. Out of these four towers, Towers A, B & D are complete and have received Occupation Certificate from competent authorities vide memo no. ZP-203/SD(DK)/2016/22138 dated 14.10.2016. Since the Tower in which complainant's units are situated is complete and has got Occupation certificate, relief of refund cannot be granted. Moreover, as respondent has not violated any term of the BBA. Relief of refund is not maintainable.
  - ii. There is no relationship of builder and buyer between respondents and complainant. As Complainant was simply an investor who had approached respondents for availing investment opportunities and for steady rental income. In furtherance of said arrangement between the parties,



respondent-company has already made payment of assured return till March, 2018.

- iii. Respondents cannot pay further assured returns to complainant due to prevailing laws. Respondents argue that on 21.02.2019, Central Government issued an ordinance "Banning of Unregulated Deposit 2019" ordinance, by virtue of which payment of assured returns became wholly illegal. Said ordinance was converted into an Act named "Banning of Unregulated Deposit Scheme Act, 2019" (BUDS Act in brief) on 31.07.2019. Respondents argue that on account of enactment of BUDS Act, they are prohibited from granting assured returns to complainants.
- iv. As far as mortgage is concerned, mortgage will have no adverse effect as it has been done in terms of agreement executed between complainant and respondent. Respondents have quoted provisions of clause 14 of agreement in support of their arguments which states that:

"The Buyer hereby authorizes and permits the Developer to raise finance/ loan from any financial institution/bank by way of mortgage/ charge/ securitization of receivables or in any other mode or manner by charge/ mortgage of the Said Land/Commercial Unit/ Building Block/ Commercial Complex subject to the condition that the Said Commercial Unit will be free from all encumbrances at the time of execution of conveyance deed in favour of the Buyer. Notwithstanding the aforesaid, the



Developer will have the first charge/ lien on the Said Commercial Unit for recovery of all its dues payable by the Buyer under this Agreement and such other payments as may be demanded by the Developer from time to time. which it may enforce by selling the Said Commercial Unit to recover the same."

v. Accordingly, respondents prayed for dismissal of these complaints.

4. The Authority has gone through all facts and circumstances of these matters. It has gone through written statements as well as oral arguments put-forth by both sides. It observes that in these matters units of complainants are situated in the Tower of B of respondent's project. Respondent<sup>has</sup> ~~not~~ got occupation certificate qua Tower B from Department of Town & Country Planning, Haryana on 14.10.2016. Therefore, request of complainants for refund of amount deposited by them cannot be accepted as same will adversely affect the project. Authority has to strike a balance between the interest of allottees and the project. It is the policy of the Authority to not allow refund in the cases where project is duly completed or is likely to be completed. In the present cases, respondent has recieved Occupation Certificate from the competent authority. Therefore, complainants' prayer for refund only for the reason of non-execution of conveyance deed cannot be allowed. Surely conveyance deeds in favour of complainants can be executed. Authority directs the respondent to execute conveyance deed in favour of the complainants immediately. This grievance of the complainant is decided accordingly.

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5. Regarding delay interest, in the captioned complaints compliant-allottees and respondent-promoter had executed the BBA under assured return scheme. As per clause 15 & 16 of the agreement, where allottee has made full payment of basic sales price, they are entitled to assured return at the agreed rate. According to this clause respondent had to pay assured returns to complainant at the rate ₹68.75/- per sq. ft. from the date of agreement till the completion of unit and at the rate ₹62.50/- per sq. ft. for up to 3 years from the date of completion of construction. In the present matter, admittedly the respondent has duly paid the assured returns to the complainant at the agreed rate till March 2018. Thereafter respondent had stopped making further payment under guise of the argument that they could not have paid due to coming into force of BUDS Act, 2019. This argument of respondent that they stopped making payment of assured return from April, 2018 as such schemes of assured returns have been banned under the Banning of Deposit Schemes Act, 2019, was rejected by Authority Complaint No. 343 of 2021 titled as "Tanya Mahajan v. Vatika Ltd". Relevant part of the order is reproduced below:

8. Authority, therefore, has no hesitation in coming into a conclusion that a proper builder-buyer relationship exists between respondents and complainants because complainants had booked the unit for its physical delivery to them. Before completion of the project assured payment @ ₹71.50 per sq. ft. per month was agreed and after completion it was to be @ ₹65 per sq. ft. per month. Complainants are very much entitled to possession of the booked unit and its leasing as per their wish after taking over of possession. The respondents have not fulfilled their promise of offering possession to complainant. Complainants therefore are entitled to relief sought i.e. possession of



the unit along with payment of overdue assured returns as per provisions of the agreement.

9. Respondents have taken a technical argument that BUDS Act has come into force w.e.f. July, 2019 and an ordinance preceding that was passed by Parliament of India in February, 2019. Further, under BUDS Act, unregulated deposits are prohibited, therefore, respondents' argument is that since the complainants are not allottees, they are depositors, therefore, they fall within the prohibitions provided in the BUDS Act.

10. Respondents have cited provisions of Sub Section 4 of Section 2 of the BUDS Act in which definition of deposits has been given. Opening line of the definition of the deposit reads ...

“.... an amount of money received by way of an advance or loan or in any other form by any deposit taker with a promise to return whether of a specified period or otherwise either in cash or any kind or any specified service.....”

Authority observes that none of the conditions listed in the aforesaid definition of “deposits” are fulfilled in the captioned complaints. The money paid by the complainants cannot be called advance or loan. It was very much a consideration for purchase of specified and identified apartments/ units in the duly licenced real estate project of the respondents. Further, definition deposit stipulates an essential condition that the deposit has taken with ‘a promise to return after a specific period’. This condition is also not fulfilled in the present case. Provisions of the agreement do not at all provide for return of the money paid by the complainants. It only provides for delivery of a pre-identified constructed unit in the lawfully licenced project of the respondents. The arguments of the respondents, therefore, are summarily rejected because consideration amount paid by complainant by no stretch of imagination can be categorised as deposits of finance for return in the form of investment bonus, profit or in any other form.

11. Respondents are desperately trying to deny legitimate rights of the complainants as are admissible to them in terms of the builder-buyer agreement executed and in terms of Real Estate (Regulation and Development) Act, 2016.

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for the stated reasons respondents are liable to pay outstanding assured returns along with delay interest to complainants starting from April 2018 till the date of this Order. Accordingly, complainants are entitled to possession of their apartment/units and execution of conveyance deed in their favour along with payment of outstanding assured returns as per the agreement entered between the parties.

6. Authority accordingly orders respondent to offer possession and execute conveyance deed in favour of complainants in both the complaints and transfer clear title in respect of the unit. Till the time, possession is handed over by respondent in favour of complainants; complainants are entitled to get agreed monthly assured returns as decided in Builder-Buyers Agreement of each complaint case. Monthly assured returns had been decided @ ₹62.50 per sq. ft. in both complaints after the completion of the unit.

Accordingly, monthly returns @ ₹31,250/- (500 sq. ft. @ ₹62.50/-) for each unit in both complaints will be paid for the entire period from March, 2018 till May 2022 i.e., the month of passing of this order along with interest as per Rule 15 of HRERA Rules, 2017. Upfront monthly assured returns payable to each complainant is as calculated in the table below:

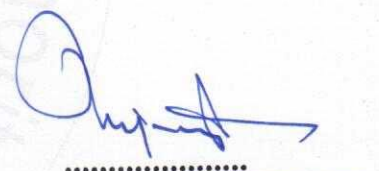
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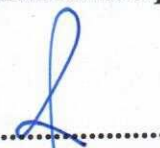
Complaint No.	Amount of monthly assured return	Time period (in terms of months)	Rate of interest	Total amount payable on account monthly assured returns
1037/2021 Unit no. 322	₹31,250/-	from 01.04.2018 to 05.05.2022	9.40%	₹18,74,609/-
1038/2021 Unit no. 605	₹31,250/-	from 01.04.2018 to 05.05.2022	9.40%	₹18,74,609/-

It is also ordered that further monthly interest will be paid regularly by the respondents till lawful offer of possession is made to the complainants. Respondent is directed to pay the calculated amount within 90 days to the complainant

7. **Disposed of** in above terms. Order be uploaded on the website and files be consigned to record room after compliance.



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RAJAN GUPTA  
[CHAIRMAN]



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DILBAG SINGH SIHAG  
[MEMBER]